



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

### Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

### About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

Cw. U.K.

Scotl. 510

A379f

L. Scot. C. 28 .e.  
Bills of exchange. 1

**L, L**  
**CW. Scotl.**  
**51)**

A3K1f



1



Lately published,  
(*By recommendation of the Court*),  
In one volume, royal octavo, price One Guinea,  
**AN ABRIDGEMENT OF THE ACTS OF THE  
PARLIAMENTS OF SCOTLAND,**  
FROM THE REIGN OF JAMES I. IN 1424, TO THE UNION  
WITH ENGLAND IN 1707 ;

INCLUDING, VERBATIM,  
ALL THE ACTS NOW IN FORCE AND USE,

WITH  
NOTES AND REFERENCES,

AND  
AN APPENDIX,  
CONTAINING A CHRONOLOGICAL TABLE OF THE TITLES OF THE WHOLE  
ACTS AND STATUTES, PUBLIC AND PRIVATE, PASSED BY  
THE SCOTTISH PARLIAMENTS.

BY  
**WILLIAM ALEXANDER,**  
Writer to Her Majesty's Signet; Fellow of the Royal Society of Edinburgh; Fellow of  
the Society of Antiquaries of Scotland; Author of an Abridgement of the  
Acts of Sederunt of the Lords of Council and Session; and of a  
Digest of the Bankrupt Act for Scotland.

**ADAM AND CHARLES BLACK, EDINBURGH ;  
LONGMAN, ORME, BROWN, GREEN, & LONGMANS, LONDON.**

~~~~~  
The principal editions of the Acts of the Parliaments of Scotland heretofore published  
are the following :—

1st, The Public Acts of the first five Jameses, and of part of those of Queen Mary,  
which were published by her command in 1566, and, being printed in the black or Saxon  
character, that impression got the name of the Black Acts.

2d, The Public Acts of the first five Jameses, of Queen Mary, and part of those of  
James VI., published in 1597 by Sir John Skene, the Clerk-Register to that Prince.

3d, The Public Acts of the first five Jameses, Queen Mary, James VI., Charles I.,  
and part of those of Charles II., published in 1681, by Sir Thomas Murray of Glendook,  
Clerk to His Majesty's Council, Register, and Rolls, by his special warrant.

4th, Another edition of Glendook's collection, published in 1682 and 1683, in two  
small volumes, to which a third was added by the King's Printers after the Union,  
containing the Public Acts between 1681 and 1707.

5th and lastly, The whole Public and Private Acts and Statutes of the Parliament  
of Scotland, from the reign of James I. in 1424 till the Union in 1707, published during  
the present century, in ten large folio volumes, under the superintendence of Thomas  
Thomson, Esq., Deputy Clerk-Register, by command of His Majesty King George III.,  
in pursuance of an address of the House of Commons of Great Britain.

The value and importance of these publications, particularly of the splendid work of  
Mr Thomson, must be fully acknowledged; but the plan on which they are edited  
creates much difficulty in consulting or referring to them in the ordinary course of  
business; because, 1st, The successive Editors published the whole Public Statutes  
known to them to have been at any time passed by the Legislature, including many of  
a temporary nature, or afterwards expressly repealed; 2d, No annotations were given

to shew what Acts published had been repealed or altered, either by subsequent Scots Acts, or by British Statutes; and, 3d, No Index *materiarum* was supplied in Mr Thomson's edition, or in any other of a later date than that of 1681.

The plan of the present publication, on the other hand, is, 1st, To lay before the reader such Public Acts only as are or may be considered in force; 2d, To supply such notes and references as will point out when any one Act is affected by, or connected with, other Acts, and the legal authorities where the subject of many of the Acts will be found noticed; and, 3d, To give a complete Index of the points and subjects contained in these Acts and Notes.

It has also been thought advisable to append to the work the Chronological Table contained in Mr Thomson's edition, exhibiting the titles of the whole Acts and Statutes, public and private, passed by the Parliaments of Scotland, without excluding any on account of their being repealed or temporary, thus furnishing the reader with the means of knowing in regard to what matters, places, and persons, Acts of the Parliament of Scotland were from time to time passed.

As may readily be supposed, the Editor met with many Acts respecting which it was difficult to decide whether they were in force or in desuetude; and also several Acts which, although not perhaps strictly in force, were still material, as illustrating the progress and history of the law. Both these descriptions of Statutes have, for the sake of greater security and utility, been inserted in the present Abridgement, generally without any annotation, and with a due regard to exclude superfluous matter.

The great aim, however, of the Editor has been to put the legal profession and the public in possession of a work, in a convenient form, containing the whole Acts passed by the Parliaments of Scotland which remain in force and use, in whole or in part, at the present period; and from the time and attention bestowed on the subject, and from the various checks that have been adopted to guard against inaccuracy, considerable confidence is entertained that his object may have been accomplished.

Lately published,

(*With the special approbation of the Court and of the Dean of Faculty*),

In one volume, royal octavo, price 18s.,

## AN ABRIDGEMENT OF THE ACTS OF SEDERUNT OF THE LORDS OF COUNCIL AND SESSION,

FROM THE INSTITUTION OF THE COLLEGE OF JUSTICE, IN MAY 1532,  
TO 12TH JULY 1837;

INCLUDING, VERBATIM,

THE WHOLE ACTS THEN IN FORCE AND USE,

WITH

NOTES AND REFERENCES.

BY

WILLIAM ALEXANDER, WRITER TO THE SIGNET.

ADAM AND CHARLES BLACK, NORTH BRIDGE, EDINBURGH.

It is a remarkable fact in the history of Scottish Jurisprudence, that, although the Acts of Sederunt made by the Court of Session, from its institution in 1532, were almost as authoritative and important as Acts of Parliament, no complete publication of them was attempted till 1790, when Mr William Tait, Advocate, by authority of the Court, made an indiscriminate publication of the Acts of Sederunt up to that time, so far as then known to have been preserved. Additional records having been discovered, the

Lord President, Sir Islay Campbell, made a Supplementary publication in 1811. The Faculty of Advocates have made four successive publications of the Acts of Sederunt, from 1790 to 1831, and the Acts since passed have been from time to time printed and published separately by a Clerk of Court.

The collection of Acts of Sederunt so placed in the hands of the legal profession, extended to about 1800 folio pages of print, and included not only such Acts as were in force and use at the date of the successive publications, but also those Acts which had been superseded or become obsolete, and no Notes or Indices were given to assist the reader in making a distinction between those Acts that were in force, in whole or in part, and those that were not. Much time and labour were thus required before the Acts could be thoroughly consulted on any particular point, and the difficulty was much increased by the same Act of Sederunt being frequently made to apply to various and dissimilar subjects, and by it not having been the practice of the Court to insert in a new Act any express repeal of the former Acts, which were thereby intended to be altered in whole or in part.

From the cumbrous and inaccessible form in which the Acts of Sederunt have been hitherto in the hands of the profession, it is not to be denied that comparatively few legal practitioners have thoroughly studied, or even read them; yet an intimate knowledge of the provisions of these Acts is very essential to every man of business, and one of the most powerful weapons that can be wielded in the conduct of litigation.

In 1808 the House of Lords required the Lords of Session to prepare and transmit copies of all Acts of Sederunt then in force. The Court finally declined making such return, as incompatible with the execution of their important duties as Judges; but, in June 1837, they were pleased cordially to approve of Mr Alexander's proposal to publish an Abridgement or selection of those Acts of Sederunt that seemed to him to be in force and use, along with Notes and references where such were required.

In performing this work the utmost pains have been taken to retain every part of the text likely to be considered in operation, and rather to err upon the safe side, by inserting what may be unimportant, or even in desuetude, than to run the risk of omissions. It may be proper to add, that the present volume, although an *Abridgement of former collections* of the Acts of Sederunt, contains *verbatim*, and at length, the whole Acts, or parts of Acts, selected as being in force and use, and may be as safely quoted from as any of the above mentioned general publications.

---

Lately published,

(*With the special approbation of the Court and of the Dean of Faculty,*)

In one volume, royal octavo, price 7s. 6d.,

## SUPPLEMENT TO ABRIDGEMENT OF THE ACTS OF SEDERUNT OF THE LORDS OF COUNCIL AND SESSION,

CONTAINING

THE ACTS FROM 12<sup>TH</sup> JULY 1837, WHEN THE ABRIDGEMENT ENDS,  
TO 24<sup>TH</sup> DECEMBER 1842,

WITH NOTES AND REFERENCES.

BY

WILLIAM ALEXANDER, W.S.

"The Court approve entirely of the proposed work, not doubting it will be prepared with the same care and accuracy as formerly."—*Lord President's Clerk's Letter.*

---

ADAM AND CHARLES BLACK, NORTH BRIDGE, EDINBURGH.



Lately published,  
 In one volume, royal octavo, price 18s.,  
*The Second Edition, greatly Enlarged and Improved, of*  
**A DIGEST OF THE BANKRUPT ACT FOR SCOTLAND,**  
 2D AND 3D VICTORIA, CAP. XLI., INTITULED,  
 "AN ACT FOR REGULATING THE SEQUESTRATION OF THE ESTATES OF  
 BANKRUPTS IN SCOTLAND."

WITH  
**AN APPENDIX,**  
 CONTAINING THE ACT ITSELF, PRACTICAL FORMS, &c.

BY  
**WILLIAM ALEXANDER, W.S.**

ADAM AND CHARLES BLACK, EDINBURGH;  
 DAVID ROBERTSON, GLASGOW; ALEX. BROWN, & CO., ABERDEEN;  
 AND SOLD BY ALL BOOKSELLERS.

Just published, price 6s.,  
**CHART OF THE PROCEEDINGS IN A  
 SEQUESTRATION,**  
 UNDER THE ACT 2D AND 3D VICTORIA, CAP. 41,  
 WITH SUPPLEMENT,  
 CONTAINING FORMS OF AFFIDAVITS BY CREDITORS, MINUTES OF  
 MEETINGS, THE ACT ITSELF, AND A COPIOUS INDEX.

BY  
**WILLIAM ALEXANDER, W.S.**

ADAM AND CHARLES BLACK, EDINBURGH;  
 DAVID ROBERTSON, GLASGOW; ALEX. BROWN & CO., ABERDEEN;  
 AND SOLD BY ALL BOOKSELLERS.

~~~~~  
 N.B.—*The Chart may be had separately, Cased, 4s., or in Sheet, 2s. 6d.*  
 ~~~~~

ADVERTISEMENT.—The object of the Chart is to exhibit, in the most distinct manner, the proceedings requisite or competent in a Sequestration, and to mark their chronological order, combined with an epitome of the powers, rights, and duties, of the various Factor, Trustee, and Commissioners.

It is expected to prove useful, particularly to mercantile persons, by shewing at a

glance the statutory periods for holding meetings of the Creditors and Commissioners, with the business that may be done thereat; the times for lodging Claims, Auditing the Trustee's Accounts, notifying and making Dividends, &c.; the procedure for carrying through a composition and discharge of the Bankrupt and Trustee without composition; and also the majorities of votes required on different occasions.

To my professional brethren, I am hopeful that the Chart may be of some practical utility, as a convenient remembrancer of the periods assigned by the Statute for the performance of the responsible duties belonging to them, and especially to the Law Agent in the Sequestration.

W. ALEXANDER.

CHAMBERS, 52 W. REGISTER STREET, S. ST ANDREW STREET,  
EDINBURGH, 17th April 1844.

Just published, price 5s.,

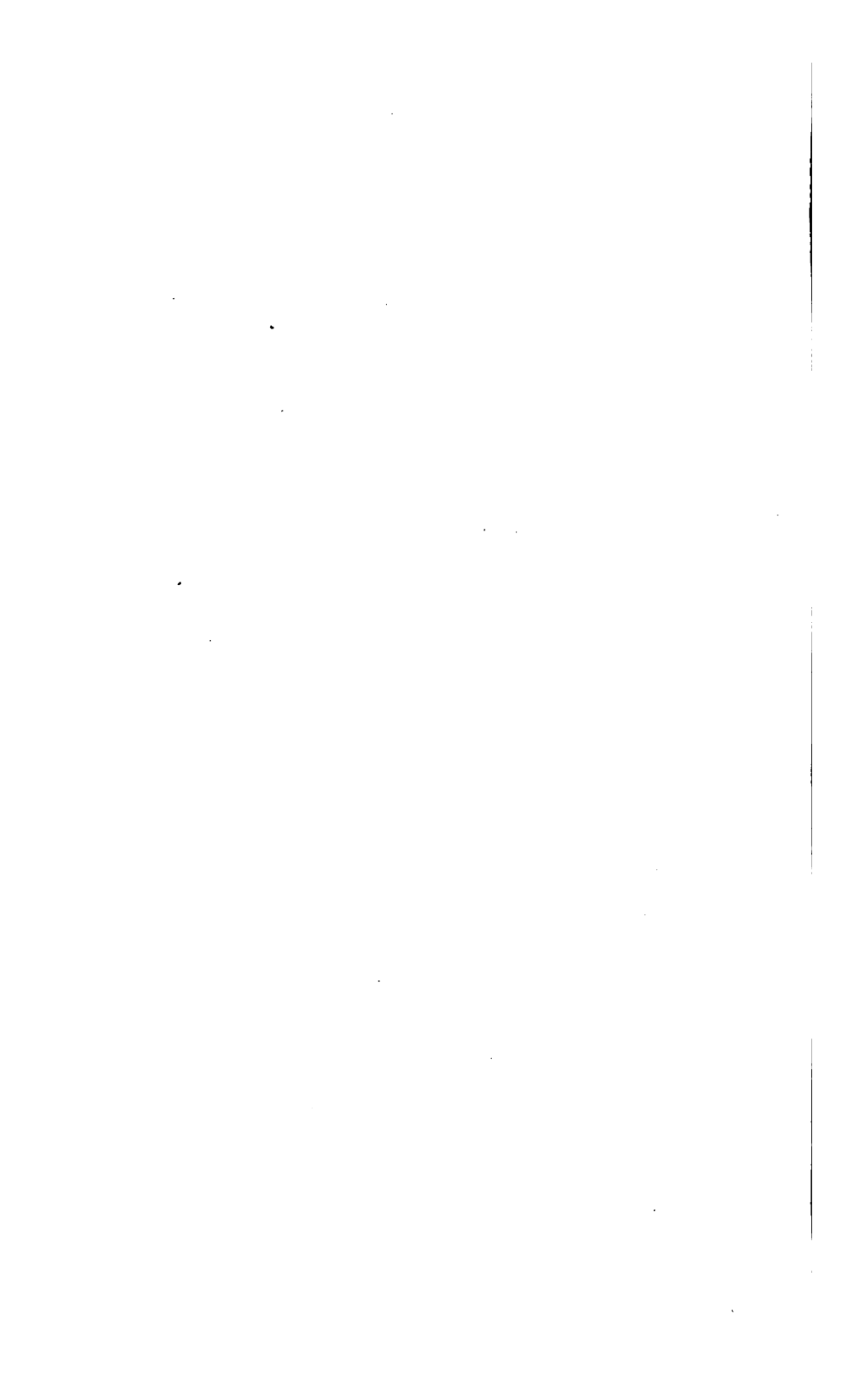
ANALYSIS  
OF  
THE HERITABLE SECURITIES ACT  
AND  
INFEEFTMENT ACT;  
WITH  
AN APPENDIX,  
CONTAINING THE ACTS AND PRACTICAL FORMS OF THE WRITS AND  
INSTRUMENTS THEREBY INTRODUCED.

BY

WILLIAM ALEXANDER,

Writer to the Signet; Author of Abridgements of the Acts of the Parliaments of  
Scotland, and of the Acts of Sederunt of the Lords of Council and  
Session; a Digest of the Bankrupt Act for Scotland, &c.

ADAM AND CHARLES BLACK, EDINBURGH;  
DAVID ROBERTSON, GLASGOW; ALEX. BROWN & CO., ABERDEEN;  
LONGMAN, BROWN, GREEN, AND LONGMANS, LONDON;  
AND SOLD BY ALL BOOKSELLERS.



**RULES AND FORMS**  
**FOR**  
**DRAWING, NEGOTIATING, AND RECOVERING PAYMENT**  
**OF**  
**BILLS OF EXCHANGE**  
**AND**  
**PROMISSORY-NOTES.**

**BY**  
**WILLIAM ALEXANDER, W.S.,**  
**AUTHOR OF "A DIGEST OF THE BANKRUPT ACT FOR SCOTLAND," &C.**

**EDINBURGH :**  
**ADAM AND CHARLES BLACK ;**  
**LONGMAN, BROWN, GREEN & LONGMANS, LONDON.**

**MDCCCXLVI.**



---

PRINTED BY NEILL AND COMPANY, EDINBURGH.

## ADVERTISEMENT.

THE present Publication is intended for the use of the Merchant and Banker, rather than of the experienced Lawyer; but even the latter may find it a useful Manual of Rules and Forms, which it might cost him some time and trouble to lay his hand upon elsewhere.

It is hoped that the Work will be found to contain, within the smallest limits possible, the practical information requisite, in the ordinary course of business, for writing out Bills of Exchange and Promissory-Notes, and for their due negotiation, along with approved Forms for Protests and Notices of Dishonour, and concise statements of the legal measures that may be adopted for recovering payment.

As it frequently happens that not only the Holders, but also the Indorsers, of Bills and Promissory-Notes, on occasion of non-acceptance or

non-payment, must, in order to secure their recourse, take some step before there can be time or opportunity for consulting a legal adviser, a competent knowledge of the law relating to this class of documents, is indispensable for the self-protection of every person engaged in Commerce or Banking. This knowledge it is the aim of the Author to convey.

EDINBURGH, *22d September* 1846.

# CONTENTS.

|                                                                                                                          | PAGE |
|--------------------------------------------------------------------------------------------------------------------------|------|
| CHAP. I. General nature of Bills and Promissory-Notes, . . .                                                             | 1    |
| II. Form of Bills and Promissory-Notes, . . .                                                                            | 3    |
| III. Indorsation of Bills and Promissory-Notes, . . .                                                                    | 7    |
| IV. Presentment for Acceptance, . . .                                                                                    | 9    |
| V. Noting and Protest for Non-acceptance, and Protest for<br>Detention of a Bill left for Acceptance, . . .              | 11   |
| VI. Acceptance <i>supra</i> Protest, or for Honour, . . .                                                                | 15   |
| VII. Notice of Dishonour by Non-Acceptance, . . .                                                                        | 20   |
| VIII. Presentment for Payment by a Payee or Indorsee, in order<br>to preserve recourse against Drawer or Indorser, . . . | 21   |
| IX. Presentment for Payment to preserve liability of the<br>Acceptor or Granter only, . . .                              | 25   |
| X. Noting and Protests of Bills and Promissory-Notes for<br>Non-payment, . . .                                           | 26   |
| XI. Payment <i>supra</i> Protest, . . .                                                                                  | 34   |
| XII. Notice of Dishonour by Non-Payment, . . .                                                                           | 35   |
| XIII. Registration of the Protest, and Summary Execution fol-<br>lowing thereon, . . .                                   | 40   |
| XIV. Action for recovery of Bills and Promissory-Notes, . . .                                                            | 43   |
| XV. Inhibition, Arrestment, and Adjudication on Bills and<br>Promissory-Notes, . . .                                     | 44   |
| XVI. Prescription of Bills and Promissory-Notes, . . .                                                                   | ib.  |
| XVII. General Remarks, . . .                                                                                             | 47   |

## APPENDIX.

|                                         |    |
|-----------------------------------------|----|
| No. I. Act 1681, c. 20, . . .           | 49 |
| II. Act 1696, c. 38, . . .              | 50 |
| III. Act 12th Geo. III., c. 72, . . .   | 51 |
| IV. Act 1st and 2d Vict., c. 114, . . . | 54 |





## CHAPTER I.

### GENERAL NATURE OF BILLS AND PROMISSORY-NOTES.

A Bill of Exchange is an open letter of request from one person to another, desiring him to pay a sum of money therein mentioned at a certain time. The person who makes or draws the bill is called the *drawer*; he to whom it is addressed is called, after signing it, the *acceptor*, and until his subscription is adhibited, the *drawee*. A bill may be drawn payable either to the drawer himself, or to a third party therein named, called the *payee*. An unaccepted bill is often denominated a *draft*.

A Promissory-Note is an obligation by the person subscribing it, termed the *granter*, to pay a sum of money therein specified to another person, called the *grantee* or *payee*, at a certain period.

A Bill or Promissory-Note may be transferred, and all right in it conveyed, merely by the drawer or other payee signing his name on the back of it, and he is thenceforward termed the *indorser*; while the person in whose favour the indorsation is intended (and who may be either specified or not) is called the *indorsee* or *holder*. He again may convey his right by indorsation to any other party, and so on in succession, till the bill or note is paid by the primary obligant.

Bills of Exchange are either *foreign* bills or *inland* bills. A bill is to be reckoned foreign where either the drawer or drawee is out of Scotland. An inland bill is one where both the drawer and drawee are parties within Scotland.

It is necessary to attend to the distinction between inland and foreign bills, in consequence of statute and usage having established different rules for the negotiation of each class, and because where bills are drawn by or on parties in countries abroad, they are usually drawn in sets, in the manner to be afterwards explained.

No precise form of words is necessary in bills or promissory-notes. Provided the words amount to an undertaking, obligation, or promise, absolutely to pay a precise sum of money at a definite time, it is a good bill or promissory-note.—*Bell's Com.* i. 388. They need not be holograph of any of the parties to them.

Bills blank in the drawer's or payee's name were at one time held to fall under the Act 1696, c. 25, "Anent Blank Bonds and Trusts;" but it is now held that this statute does not apply to the case of bills, and that the acceptance is an undertaking to pay to the person who shall have right to the document. An executor has been found entitled to sign as drawer a bill found in the repositories of a deceased person blank in the name of the drawer, and to raise diligence against the acceptor.—*Fair v. Cranstoun*, 11th July 1801; *Morr.* 1677.

A Bill may be drawn, accepted, or indorsed, and a Promissory-Note may be granted or indorsed by a person holding a written or implied mandate, or power of procuration as it is generally termed, from his consti-

tuent. If the document expressly bears to be signed *per* procuration of the principal, the agent or mandatary so signing will not bind himself unless he has done so without authority.

The bill or note must be written on the stamp required by law, which cannot be afterwards affixed.

## CHAPTER II.

### FORM OF BILLS AND PROMISSORY-NOTES.

The following are the forms of Bills and Promissory-Notes in ordinary use:—

1. *Bill where the Place of Payment is not specified.*

L.500.

EDINBURGH, 8th July 1843.

Three months after date, pay to me, or order, the sum of five hundred pounds sterling, for value.

(Signed) A. B.

(Signed) C. D.

To Mr C. D., Merchant, London.

2. *Bill specifying place of Payment.*

L.200.

GLASGOW, 8th July 1843.

Four months after date, pay to me, or order, at your warehouse, in Princes Street, Edinburgh, (or "at the Commercial Bank of Scotland's office in Edinburgh," or any other

*place of payment that may be fixed upon,)* the sum of two hundred pounds sterling, for value.

(Signed) A. B.

(Signed) G. A. & Co.

To G. A. and Company, Merchants, Edinburgh.

### 3. *Bill drawn in favour of a Third Party.*

L.100.

ABERDEEN, 8th July 1843.

One month after date, pay L. M., or order, at (*specify place of payment,*) the sum of one hundred pounds sterling, for value.

(Signed) T. S. & Co.

(Signed) C. D.

To C. D., Commission-Agent, Dundee.

### 4. *Bill drawn payable at sight.*

L.50.

EDINBURGH, 8th July 1843.

At sight, pay to me, or order, (or "to L. S., or order,") the sum of fifty pounds sterling, value in account.

(Signed) A. B.

(Signed) C. D.

(Dating his acceptance thus :)

"11th July, 1843."

To C. D., Commission-Agent, London.

To be indorsed by A. B., the drawer, or L. S., the payee (*as the case may be*).

### 5. *Bill drawn payable at a certain time after sight.*

L.150.

LYB, 8th July 1843.

Three days (or "one month," or "six weeks," *as the case may be*) after sight, pay to me, or order, (or to "R. S., or order,") the sum of one hundred and fifty pounds sterling, for value.

(Signed) A. B.

(Signed) C. D.

(Dating his acceptance.)

To C. D., Broker, Mincing Lane, London.

6. *Bill payable by instalments.*

L.300.

STIRLING, 8th July 1843.

By equal instalments, at four, eight, and fifteen months after date, pay to me, or my order, at your office in Glasgow, the sum of three hundred pounds sterling, for value.

(Signed) A. B.

(Signed) C. D.

To C. D., Accountant, Glasgow.

7. *Bill drawn on several parties jointly and severally.*

L.1000.

EDINBURGH, 8th July 1843.

Six months after date, pay to me, or order, within the Royal Exchange Coffeehouse, Edinburgh, the sum of one thousand pounds sterling, for value.

(Signed) A. B.

N. L.

To N. L., Merchant, Edinburgh,  
R. O., Manufacturer, Paisley, and  
T. S., Merchant, Port-Glasgow,  
jointly and severally.

R. O.

T. S.

8. *Foreign Bill drawn by a person in Scotland on a party abroad.**First of Exchange.*

L.250.

LEITH, 8th July 1843.

At sixty days after sight of this my first of exchange (second and third of same tenor and date being unpaid), pay to

my order, (or "to C. D., or order,") the sum of two hundred and fifty pounds sterling, for value, as advised.

(Signed) A. B.

(Signed) B. & Co.

(Dating acceptance.)

To Messrs B. & Co., Merchants, Sydney.

*Second of Exchange.*

L.250.

LEITH, 8th July 1843.

At sixty days after sight of this my second of exchange, (first and third of same tenor and date being unpaid) pay to my order, (or to "C. D., or order,") the sum of two hundred and fifty pounds sterling, for value, as advised.

(Signed) A. B.

(Signed) B. & Co.

(Dating acceptance.)

To Messrs B. & Co., Merchants, Sydney.

*Third of Exchange.*

L.250.

LEITH, 8th July 1843.

At sixty days after sight of this my third of exchange (first and second of same tenor and date being unpaid), pay to my order, (or to "C. D., or order,") the sum of two hundred and fifty pounds sterling, for value, as advised.

(Signed) A. B.

(Signed) B. & Co.

(Dating acceptance.)

To Messrs B. & Co., Merchants, Sydney.

*9. Promissory-Note.*

L.400.

EDINBURGH, 8th July 1843.

On demand, (or "one day after date," or *some other period after date,*) I promise to pay to A. B., or order, within

my house here, the sum of four hundred pounds sterling, for value.

(Signed) C. D.

10. *Promissory-Note by several persons, obliging themselves jointly and severally, and payable by instalments.*

£.800.

EDINBURGH, 8th July 1843.

By equal instalments, at six and twelve months after date, we promise, jointly and severally, to pay to W. A. and Company the sum of eight hundred pounds sterling, for value.

(Signed) J. D.

T. L.

D. A. & Co.

## CHAPTER III.

### INDORSATION OF BILLS AND PROMISSORY-NOTES.

The right to the contents of a bill or promissory-note is transferred by the drawer or payee simply signing his name on the back of it, which is termed indorsing. Indorsation may take place either before or after acceptance of a bill, and either before or after the term of payment of a bill or promissory-note. The indorsation may be either expressly in favour of a particular party, in which case the indorser writes above his signature, "Pay to A. F., or order," or the name of the indorsee may be left blank. Payment of a bill or promissory-note specially indorsed, can be demanded only by the indorsee named; but when a bill or promissory-note is blank



## 8 INDORSATION OF BILLS AND PROMISSORY-NOTES.

indorsed, the holder is considered to be the party in right of it. There is no limit to the number of indorsations of which a bill or promissory-note may be the subject; and every indorser is liable to the parties acquiring right after him, unless he adds after his subscription the words "without recourse."

A special indorsation may be made under such a condition or restriction as prevents the indorsee from re-indorsing the bill. This is effected by the indorser writing above his signature, "Pay to A. B. *only*," or "Pay to A. B. *for my use*." Such a restrictive indorsation constitutes the indorsee a mere mandatary for recovering payment of the bill for behoof of the indorser.

It is incompetent to transfer by indorsation part of the sum contained in a bill or note to one person, and part to another; but where a payment has been made to account of a bill or note, the sum remaining due may be transmitted by indorsation.

It is unnecessary to date the indorsation. If there is no date to the indorsation, it will be held to be of the date of the bill or note. If it is dated, it will be presumed correct till the contrary be proved.

An executor acquires right to all bills or notes of the deceased, and is entitled to indorse them. As the right to a bill or note payable to a woman vests, on her marriage, in her husband, he then alone becomes entitled to indorse it.

Although the bill or note itself is transferred by indorsation, even after it has become due, the protest and any diligence that may have followed are transmissible only by a formal assignment.

## CHAPTER IV.

## PRESENTMENT FOR ACCEPTANCE.

While a bill remains in the hands of the drawer himself, he may, of course, use his own discretion with regard to presenting it for acceptance ; but if he has given or indorsed it to a third party, certain duties are incumbent on the holder in regard to presenting the bill for acceptance, by the neglect of which he loses his recourse against the drawer and any indorser.

When a particular period of payment is specified in the bill, such as one month after date, the holder may, if he please, wait till the day of payment, and present the bill for acceptance and payment at the same time ; but if he presents separately for acceptance, and it is refused, he must protest for non-acceptance, and give notice to the drawer and indorsers.

When the bill is payable at a certain period after sight, it is the duty of the holder to present it for acceptance within a reasonable time. The reasonableness of the time will depend on the custom, with all the circumstances ; such as, that the delay was occasioned by the draft being kept in circulation, &c.

If requested by the drawee, the bill must be left with him for twenty-four hours to examine and consider whether he should accept ; but if a post, by which his non-acceptance could be intimated, leaves sooner, it is said he falls to decide by that time.

If the drawee has a place of business, bills drawn on him should be presented for acceptance either there or to himself personally ; if not in trade, personally or at his dwelling-house. A draft on a company falls to be presented for acceptance at their counting-house.

The presentment should be made at a reasonable hour of the day, and if at a place of business, during the time the same is customarily open. *Neilson v. Leighton*, 9th Feb. 1844.

If the drawee does not reside at the place indicated by the address of the bill, and cannot be heard of on due inquiry, it should be protested there for non-acceptance ; but if it is found that he has removed to some other residence, the bill should be forwarded for presentment there, or to himself personally, without delay.

A holder of a bill should not take a partial or conditional acceptance, but one in the exact terms of the draft.

Where the holder of a bill is merely agent for the real creditor, and has received it for the purpose of getting it accepted, but fails to do so until the day of payment, he will be liable for the consequences of acceptance and payment being then refused.—*Dunlop v. Hamilton & Co.*, 16th January 1810 ; *F. C.* A payee must present the bill immediately for acceptance, if the drawer has desired him to do so.—*Bell's Com.* i. 409.

If the drawee dies before presentment of a bill for acceptance, the holder should make inquiry after his representatives ; and if he find that they have actually taken up his succession, he should present it to them for acceptance. But when the drawee's heirs have not

taken up his succession, nothing seems necessary but that the holder should give notice, within a reasonable time, to the other parties, of the drawee's death, by which presentment has become impossible.

When, on the other hand, the creditor in the unaccepted bill dies, his representatives ought to present it for acceptance in the same manner as the creditor himself could have done if alive.

The failure to present in due time may be excused by any sufficient reason not arising from the holder's misconduct, such as illness, intervening war, or unavoidable detention.

---

## CHAPTER V.

### NOTING AND PROTEST FOR NON-ACCEPTANCE, AND PROTEST FOR DETENTION OF A BILL LEFT FOR ACCEPTANCE.

Bills are seldom, if ever, protested for non-acceptance at the instance of the drawer, as such protest confers no farther legal claim by him than he would otherwise possess against the drawee; but where a bill has been drawn or indorsed in favour of a third party, and the drawee refuses or fails to accept the bill when duly presented to him for acceptance, it is the duty of the holder to get it noted immediately, and a formal instrument of protest afterwards extended.

Noting is performed by the notary making a minute

or memorandum on the bill, containing his own initials, the year, month, and day, the reason (if assigned) for non-acceptance, with his charges, and sometimes also the initials of the witnesses. In case of the unlawful detention of a bill left for acceptance, a protest for detention will be taken. The following are examples of protests:—

*Protest for Non-Acceptance at the instance of a Payee.*

L.100.

ABERDEEN, 8th July 1843.

One month after date, pay L. M., or order, at your counting-house in Dundee, the sum of one hundred pounds sterling, for value.

(Signed) T. S. & Co.

To C. D., Commission-Agent, Dundee.

At Dundee, the eleventh day of July, one thousand eight hundred and forty-three years,—

The principal bill above copied was, in the personal presence (or “at the dwelling-house at \_\_\_\_\_,” or “at the counting-house in \_\_\_\_\_ Street, Dundee”) of the above-named C. D., duly protested by me, notary-public subscribing, at the instance of the also above-named L. M., to whom the same is payable, not only against the said C. D., on whom the same is drawn, for non-acceptance, but also against the said T. S. & Co., the drawers, for recourse, and against all concerned, for interest, damages, and expenses, as accords, in presence of E. and F. (names and designations of witnesses), witnesses specially called to the premises.

*Quæ Attestor.*

G., N.-P.

*Protest for Non-Acceptance, at the instance of an Indorsee.*

L.500.

EDINBURGH, 8th July 1843.

Three months after date, pay to me, or order, the sum of five hundred pounds sterling, for value.

(Signed) A. B.

To C. D., Merchant, Glasgow.

Indorsed—Pay E. F., or order. (Signed) A. B.

At Glasgow, the thirteenth day of July, eighteen hundred and forty-three years,—

The principal bill above copied was, in the personal presence (or “at the dwelling-house,” or “in the warehouse”) of the above-named C. D., duly protested by me, notary-public subscribing, at the instance of the above-named E. F., the indorsee and holder, not only against the said C. D., on whom the same is drawn, for non-acceptance, but also against the drawer and indorser, for recourse, and against all concerned, for interest, damages, and expenses, as accords, in presence of G. and H., witnesses specially called to the premises.

*Veritas.*

R., N.-P.

*Note.*—In protests of foreign bills of exchange, the instrument should bear that they are protested for “*exchange, re-exchange, interest, damages, and expenses.*”

*Protest at the instance of a Payee, for Detention of a Bill left for Acceptance.*

At Edinburgh, the fourteenth day of July, eighteen hundred and forty-three years, before me, notary-public, appeared A. W., banker there, who declared that, on the day preceding, he left for acceptance, agreeably to usage and custom, with C. D., grocer, High Street there, a bill, dated the tenth day of July current, drawn by R. S., merchant in Glasgow, on the said C. D., for the sum of two hundred and fifty pounds

sterling, payable to him, the said A. W., three months after date, and that he had, on the date hereof, applied to get back the said bill, accepted or unaccepted, but without procuring the same, or getting any satisfactory answer; wherefore the said A. W. required me to demand delivery from the said C. D. of the said bill, accepted or unaccepted; and in default, to protest it accordingly. Whereupon I passed to the personal presence (or "to the place of business," or "to the dwelling-house," *as the case may be*) of the said C. D., and there speaking to (*here mention the person spoken to*), I demanded delivery of the said bill, accepted or unaccepted; to which demand I received for answer (*here mention the answer received.*) Wherefore I, the said notary-public, at the request aforesaid, have protested, and hereby protest, as well against the said C. D. and the drawer of the said bill, as against all others whom it may concern, for non-acceptance and detention of the said bill, and for interest, damages, and expenses, as accords. So done and protested, place and date foressaid, in presence of X. and Y., witnesses specially called to the premises.

*Veritas.*

M. L., N.-P.

*Note.*—In the case of the notary not finding the drawee personally, and that his dwelling-house and place of business are shut, say, "Whereupon I passed to the place of business of the said C. D., in High Street, aforesaid, and afterwards to his dwelling-house in Street, Edinburgh; and finding both places shut, I gave three audible knocks at the most patent doors thereof, but no one answered; wherefore," &c.

A bill protested for non-acceptance need not be again protested for non-payment. *Price v. Dardell*, Chitty 467; *De la Torre v. Barclay*, 1 Starkie, Part 2, 7; Thomson, p. 450.

A draft followed by a protest for non-acceptance is equivalent to an intimated assignation, in favour of the holder, of any funds belonging to the drawer that may be in the drawee's hands.

---

## CHAPTER VI.

### ACCEPTANCE *SUPRA* PROTEST, OR FOR HONOUR.

The acceptance of a bill ordinarily infers that a debt is due by the acceptor, and it may happen, that while he is not prepared to make such admission, yet he may be willing to accommodate the drawer by accepting the bill, provided he can, at same time, preserve his recourse against the drawer. In such a case, the drawee should allow the bill to be protested for non-acceptance, in the first place, and then accept, in presence of a notary-public and witnesses, thus, "accepted *supra* protest, for the honour of the drawer ;" and to the protest will fall to be added what is termed an Act of Honour, thus :—

Thereafter the same day, in presence of me, the said notary-public, appeared the said C., on whom the bill mentioned in the foregoing protest is drawn, who declared, that, notwithstanding he would not accept the said bill in the form in which it was drawn, yet he would accept the same under protest for honour, and on account of A. B. the drawer ; and protested that the said A. B. should be bound to him for his reimbursement in due form of law, in presence of the said witnesses.

(Signed) G., N.-P.



An acceptance *supra* protest is competent not only by the drawee, but by any third party to whose knowledge the draft may come, desirous that it should not be returned dishonoured by non-acceptance.

Acceptance *supra* protest may likewise be for the honour of any of the indorsers who, as well as the drawer, have an obvious interest that a draft should not be returned for want of acceptance.

A bill drawn not on account of the drawer himself, but as mandatary for some other person for whom the drawee is unwilling to accept, may be accepted by him *supra* protest for the honour of the drawer, and relief preserved against him in place of his constituent.

In place of the form of an *act of honour*, as above given, being adopted, an instrument of acceptance *supra* protest may be taken and extended. The following may serve as an example, where a third party interferes for the honour of an indorser.

*Instrument of Acceptance supra Protest by a third party  
for the honour of an Indorser.*

At Edinburgh, the thirteenth day of July, eighteen  
hundred and forty-three years,—

In presence of me A. B., notary-public, residing in Edinburgh, by Royal authority duly admitted and sworn, and of the witnesses *subscribing*, appeared A. S., merchant in Edinburgh, amongst with R. O., banker in Edinburgh, the holder of an original bill of exchange, dated the first day of May last, drawn by P. B., of the Island of Grenada, in the West Indies, upon J. C., West India merchant, Edinburgh, whereby the said P. B. ordered him, six days after sight (second and third of the same date and tenor, being unpaid), to pay to the said P. B., or order, the sum of three hundred pounds sterling.

Which bill was indorsed by the said P. B. to S. W., merchant in London, and by him indorsed to the said R. O. ; and which bill the said R. O. exhibited, together with a protest, at his instance, against the said J. C. the drawee, for non-acceptance, and against the drawer and indorsers for recourse, &c. ; and then and there the said A. S. declared, that, in order to prevent the return of the said bill, and the charges which might thereby be occasioned, he would and did accept of the same for the honour of the indorser S. W. ; and protested that his said acceptance should no otherwise be construed, and that he reserved all right of action and relief competent to him against the said S. W., and also against the said P. B. the drawer, in consequence of his acceptance of the said bill, as accords of law : whereupon the said A. S. took instruments in my hands. Thus done and protested before, and in presence of, M. N. and O. P., witnesses to the premises specially called and required.

(Signed) A. B., *N.-P.*

(Signed) M. N., *witness.*

O. P., *witness.*

*Rules regarding Acceptances supra Protest.* The general principle is, that a person accepting for the honour of another assumes his place both as to rights and liabilities, but with relief also against him. The following special rules emerge :—1. Where the acceptor *supra* protest is the *drawee himself*, the rights and duties of the holder of the bill are no way altered from what they would have been under an absolute acceptance. 2. An acceptance *supra* protest is held to be for the honour of the drawer, unless otherwise specified. 3. An acceptor *supra* protest for the honour of the drawer, is liable for the bill to all the indorsers, as well as to the holder. 4. An acceptor

*supra* protest for the honour of an indorser becomes responsible not only to the holder, but to all the subsequent indorsers. 5. An acceptor *supra* protest for the honour of a drawer, has a claim of relief against him alone. 6. An acceptor *supra* protest for the honour of an indorser, has a right of relief not only against him, but all prior obligants for the bill. 7. If the acceptor *supra* protest is also drawee, it is incumbent on him immediately to give notice of such acceptance to the party for whose honour he has interfered, and to any obligant liable to that party from whom the acceptor means to claim the bill. The holder, in such a case, is not bound to give notice. 8. Where the acceptor *supra* protest is not the drawee, but some third party, it is the duty of the holder forthwith to transmit a copy of the protest for non-acceptance, and of the act of honour, or of the separate instrument substituted for it, to the party for whose honour the bill has been accepted, and to give intimation to all the other obligants on whom the holder intends to preserve recourse. 9. An indorser receiving notice of an acceptance *supra* protest should immediately give intimation to any prior obligants to preserve his recourse on them. 10. An acceptor *supra* protest cannot claim relief from any party till the bill is payable. 11. The holder of a bill is not bound to take an acceptance *supra* protest from a party who is not the drawee, and, it is said, not even from him ; but if the acceptance of the drawee is refused by the holder, he cannot proceed against the drawer and indorsers till the bill is payable. 12. It is doubtful whether the holder of a bill can, during its

currency, sue the drawer and indorsers, notwithstanding taking an acceptance from a third party for honour of the drawee ; but it appears clear, that the holder of a bill, accepted by a third party, for the honour of an indorser, may proceed against any prior indorser and the drawer. 13. It is considered to be competent for the holder of a bill to accept it himself *supra* protest, for the honour of the drawer, or of any indorser ; in which case, he must give notice to the parties he wishes to hold bound. 14. Although one person accepts for the honour of the drawer, another may accept for the honour of an indorser, to prevent his being called on by the holder. 15. Any party to a bill held liable for its contents by a notice of acceptance *supra* protest, may proceed against the prior obligants, even before it falls due, for his relief. 16. It is the duty of a holder of a bill, accepted *supra* protest by a third party, to present the bill to the drawee when due for payment, and to protest and give notice, as in the case of a dishonoured bill, otherwise the holder will lose his recourse against the acceptor *supra* protest, and all the other obligants. *Williams v. Germaine*, 7 B. & Cr. 468, 1 M. & RyL. 394. 17. The holder of a bill accepted by himself *supra* protest for the honour of an indorser, cannot proceed against any subsequent indorser till the bill falls due, as his acceptance was intended for the benefit of the indorser for whom he accepted it, and those to whom such indorser is liable cannot be placed in a different situation from himself by such act.

From these rules, the various other questions likely to occur in practice appear capable of solution.

## CHAPTER VII.

## NOTICE OF DISHONOUR BY NON-ACCEPTANCE.

In order to preserve recourse against the drawer or indorsers of a bill, the holder must, in case of acceptance being requested and refused, not only duly protest it for non-acceptance, but give notice of the dishonour to the drawer and indorsers, or, at least, to such of them as he intends to keep liable to him. Such notice must be given in the same manner, and within the same time, as is required, by statute and usage, in the case of the dishonour of a bill by non-payment; and reference is made to the observations under that head below (Chap. 12.) The following may serve as an example of the notice :—

*Notice of Dishonour by Non-Acceptance to be made by the Payee to the Drawer of the Bill.*

EDINBURGH, 30th July 1843.

SIR,—I have to acquaint you that your draft in my favour on Mr A. B., for L.100, dated the 24th current, payable three months after date, was this day presented for acceptance; and the same having been refused, was duly protested at my instance for non-acceptance and recourse; and I have to request that the amount of the draft, with interest and charges as after-noted, be immediately settled.—I am, Sir, your most obedient servant,

(Signed) C. D.

Bill, . . . . . L.100  
 Protest and Stamp, . . . .  
 Postages, . . . . .  
 Interest from 24th current till paid,

—  
 L.

To Mr E. F., Merchant, Glasgow.

## CHAPTER VIII.

## PRESENTMENT FOR PAYMENT BY A PAYEE OR INDORSEE, IN ORDER TO PRESERVE RECOURSE AGAINST DRAWER OR INDORSER.

Supposing some other party than the drawer of an accepted bill, or the grantee of a promissory-note, to be the creditor for it at the time of it becoming payable, the holder has certain duties to perform in regard to the time and mode of presentment for payment, in order to preserve his right of recourse against the drawer and indorsers.

*Time of Presentment.*—It is necessary to distinguish, on the one hand, whether the bill or note to be presented for payment is one payable on demand, or, on the other hand, payable at sight, or so many days after sight, or at a particular date, or at a certain period after date.

1st, A bill payable *on demand*, must be presented for payment within a reasonable time after the holder receives it. The decisions of Courts of Law have varied with respect to what is to be considered a reasonable time. From these it may be deduced, that where the holder of the bill resides in the same place where it is payable, he ought to present it at latest in the course of the next day after receiving it. But in *Leith Banking Company* against *Walker's Trustees*, 22d January 1836, where a promissory-note, payable on demand, was held to be granted as a loan, and not as a remittance, it was

found to have been duly negotiated, though indorsed to the bank, soon after its date, but not presented or protested for more than five months thereafter. Where the holder resides in a different place from that where the bill is payable, it appears to be his duty to transmit it to obtain payment at latest the day after receiving it. Bills may be transmitted by other safe conveyances, besides the post, although, unless in case of necessity, the remitter must take the risk of those conveyances arriving later than the post, which is the only accredited conveyance.

2*d*, In calculating what is the proper time for presenting for payment, all bills payable *at sight*, or *so many days after sight*, or *at a particular date*, or *at a certain period after date*, it is necessary to attend that three days, termed days of grace, are allowed to the acceptor to retire his obligation, after the day on which the bill falls due, unless the last day of grace is a Sunday, or a holiday when, by public authority, no business can be done.

Bills payable at sight must thus be presented for payment on the third day after the date of acceptance. Such, at least, is the rule in England; but there has been no decision in Scotland on the point, whether a bill at sight is payable on presentment. By usage, drafts at sight on *bankers* are paid on presentment.

When a bill is payable so many days after date or after sight, this period is computed exclusive of its date, or the date of its acceptance. Thus, a bill dated the 3d January 1843, payable twenty days after date, would be due on the twenty-third day of the same month, and

three days of grace added, making the 26th the proper time for presenting the bill for payment. When the term of payment is expressed in months, calendar months, and not lunar months, are understood. Thus, a bill dated 2d January 1843, payable three months after date, is due on Sunday 2d April 1843, to which add three days of grace, making the proper time for presenting the bill for payment Wednesday, 5th April 1843. Again, a bill dated on 29th, 30th, or 31st January, made payable a month after date, becomes due on the 28th February, or in leap year on the 29th, to which add three days of grace, making the 3d March the day when the bill must be presented for payment.

If the last day of grace falls on a Sunday or holiday, the bill must be presented for payment on the day preceding, and if that should also happen to be a Sunday or holiday, then the bill must be presented on the first day of grace.

*Hour.*—The bill must be presented for payment within a reasonable time before the expiration of the day on which it is demandable ; and if, by the known custom of the place, bills are payable only within limited hours, a presentment beyond those hours will not be sufficient. If the bill is payable at a banker's, it must be presented within the hours at which, in that place, banks are open. It has been held a sufficient presentment though after bank hours, if a person is there to answer and refuses. Where the acceptor is a common trader, much greater latitude is given with respect to the hour of presentment.—*Bell's Com.* i. 411-12.



*Where and to whom presentment to be made.*—If a place of payment is specified in the bill, or in a marking or memorandum thereon, it must be presented for payment there, in order to preserve the holder's recourse against the drawer and indorsers.

Where no place of payment is specified, the holder of a bill must present it for payment to the acceptor personally, or at his counting-house or place of business, or if not in trade, at his dwelling-house.

*Absence, Bankruptcy, or death of Acceptor.*—The holder must, in case of the absence or removal of the acceptor, use all diligence to find out his residence, if no place of payment has been specified. If not to be found, or dead, inquiry should be made after his representative, and the bill should be presented to him. When a bill is presented at the place mentioned in it as the acceptor's residence, but the house is found shut, and he cannot be heard of in the neighbourhood, the bill is to be held duly presented and dishonoured. Although the acceptor is notoriously bankrupt or insolvent, and his bank or shop shut, the bill must be presented in the same manner as if nothing of the kind had happened.

The same rules apply to the presentment for payment of promissory-notes.

## CHAPTER IX.

PRESENTMENT FOR PAYMENT TO PRESERVE LIABILITY  
OF THE ACCEPTOR OR GRANTER ONLY.

Although the holder's recourse against the drawer and indorsers of a bill or promissory-note is lost by failure to present it for payment at the time and agreeably to the rules explained in the preceding Chapter, his claim against the acceptor or granter remains entire, the creditor not being, in the general case, bound, so far as they are concerned, to require payment till he thinks fit. In case, however, of a bill being made specially payable at a banker's, it is proper to present it for payment when due, to prevent the holder being exposed to the acceptor pleading that it would have been paid if presented, and that he sustained loss by the subsequent failure of his bankers.

Further, it must be kept in view, that, if it is intended to proceed by protest and summary diligence, and not merely by an action at law, the bill or note must be presented for payment *within six months* after its falling due, at the place of payment specified therein, or if none is mentioned, to the debtor personally, or at his counting-house during business hours, or, if not in trade, at his dwelling-house.

Doubts having arisen whether an acceptor was entitled to plead non-liability in consequence of a bill not being presented for payment at the place specified in the bill or in his acceptance, it is, by 1st and

2d George IV., c. 78, enacted, 1. "If (after 1st August 1821) any person shall accept a bill of exchange payable at the house of a banker, or other place, without further expression in his acceptance, such acceptance shall be deemed and taken to be, to all intents and purposes, a general acceptance of such bill." But 2. "If the acceptor shall, in his acceptance, express that he accepts the bill, payable at a banker's house, or other place, only, and not elsewhere, such acceptance shall be deemed and taken to be, to all intents and purposes, a qualified acceptance; and the acceptor shall not be liable to pay the said bill, except in default of payment, when such payment shall have been first duly demanded at such banker's house or other place."

It must, however, be attended to, that this statute does not alter the right of a drawer or indorser to have a bill presented by the holder for payment at the place of payment specified therein, or in a memorandum relative to the acceptance indicating where payment may be expected.

---

## CHAPTER X.

### NOTING AND PROTESTS OF BILLS AND PROMISSORY- NOTES FOR NON-PAYMENT.

By 12th Geo. III., cap. 72, § 41, it is enacted, that "all inland bills and promissory notes shall be protested, in like manner as foreign bills, before the expi-

ration of the three days of grace, otherwise there shall be no recourse against the drawers or indorsers of such inland bills, or against the indorsers of such promissory-notes."

The holder of a bill or promissory-note, dishonoured by non-payment when duly presented, must, on the same day, in order to preserve his recourse against the drawer and indorser, and his right of summary diligence against the acceptor or granter, carry it to a notary-public for the purpose of being noted by him, of that date. All that it is necessary for the notary to do, is to write the date, with his initials and the letters N.-P., on the bill; but sometimes notaries make a minute or memorandum of the answer made when the bill was presented, and likewise of the initials of the witnesses, and of the charge for noting. In ordinary cases, such as where a bill is discounted with a bank, it is presented for payment by a clerk or messenger of the holder on the day it is due, and if not retired before the expiry of that day, it is, without any farther presentment, noted by the notary of the bank; and although, when he comes to extend his protest, he states that the bill was protested in the presence of two particular witnesses, one of whom is generally the person who presented the bill, yet it seldom happens that there are, in point of fact, two witnesses to the presentment or protest. Our law writers, however, lay it down, that before a notary can regularly note or protest a bill for non-acceptance or non-payment, he should present it himself in presence of two witnesses, on the day it is payable.—*Bell's Com.*, vol. i. p. 414; *Thomson*, pp. 445-6.

The bill or note, with the indorsements, whether in full or in blank, must be prefixed *verbatim* to the instrument of protest. The instrument should mention the answer given, if a special one, to the demand for payment, and state that the bill or note was duly protested for non-payment and recourse. The names of the witnesses to a protest must be mentioned in the instrument; but it has been decided that their designation need not be inserted in the instrument, and that their subscriptions are unnecessary.—*Inglis and Foulis v. M'Kie*, 1697, *Forbes*, 89.

*Protest for Non-payment of a Bill previously protested for  
Non-acceptance.*

L.100.

ABERDEEN, 8th July 1843.

One month after date, pay L. M., or order, at your counting-house in Dundee, the sum of one hundred pounds sterling, for value.

(Signed) T. S. & Co.

To C. D., Commission-Agent, Dundee.

At Dundee, the eleventh day of August eighteen  
hundred and forty-three years,—

Which day, I, notary-public subscribing, at the request of the above named L. M., to whom the same is payable, passed to the counting-house of the also above named C. D., where the principal bill above copied is payable, and thereafter exhibiting and reading over the same, I represented that it had now become due since the date of the protest taken thereon for non-acceptance on the 11th July last, and demanded pay-

ment of the contents thereof; which demand being refused, I duly protested the said bill, at the instance of the said payee, not only against the said C. D., for non-payment of the contents, but also against the said T. S. & Co., the drawers, for recourse, and against all concerned, for interest, damages, and expenses, as accords, in presence of E. and F. (*names and designations of witnesses*), witnesses specially called to the premises.

*Quæ Attestor.*

G., N.-P.\*

\* "Whereas doubts having arisen as to the place in which it is requisite to protest for non-payment of bills of exchange, which, on the presentment for acceptance to the drawee or drawees, shall not have been accepted, such bills of exchange being made payable at a place other than the place mentioned therein to be the residence of the drawee or drawees thereof; and it is expedient to remove such doubts; Be it therefore enacted, by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in Parliament assembled, and by the authority of the same, That, from and after the passing of this Act, all bills of exchange, wherein the drawer or drawers thereof shall have expressed that such bills of exchange are to be payable in any place other than the place by him or them therein mentioned to be the residence of the drawee or drawees thereof, and which shall not, on the presentment for acceptance thereof, be accepted, shall or may be, without further presentment to the drawee or drawees, protested for non-payment in the place in which such bills of exchange shall have been by the drawer or drawers expressed to be payable, unless the amount owing upon such bills of exchange shall have been paid to the holder or holders thereof, on the day on which such bills of exchange would have become payable, had the same been duly accepted."

—2d and 3d William IV., c. 98.

*Protest for Non-payment, at the instance of a Drawer  
against the Acceptor of a Bill.*

L.100.

EDINBURGH, 24th July 1843.

Three months after date, pay to me or order, at your counting-house at Leith, the sum of one hundred pounds sterling, for value.

(Signed) A. B.

(Signed) C. D.

To Mr C. D., Merchant, Leith.

At Leith, the twenty-seventh day of October  
eighteen hundred and forty-three,—

Which day, the principal bill above copied was, where payable, duly protested by me, notary-public subscribing, at the instance of A. B. (*design him*), the drawer, against the above named and designed acceptor, for non-payment of the contents, and for interest, damages, and expenses, as accords, in presence of E. and F. (*design them*), witnesses specially called to the premises.

Veritas.

X., N.-P.

*Protest for Non-payment, at the instance of a Drawer against  
the Acceptor of a Bill, on account of which a partial  
payment has been made.*

L.100.

EDINBURGH, 24th July 1843.

Three months after date, pay to me or order, at your counting-house at Leith, the sum of one hundred pounds sterling, for value.

(Signed) A. B.

(Signed) C. D.

To Mr C. D., Merchant, Leith.

Written on the back thus,—

27th October 1843, Fifty pounds paid to account.

At Leith, the first day of November eighteen hundred and forty-three,—

The principal bill above copied was, where payable, duly protested by me, notary-public subscribing, at the instance of A. B. (*design him*), the drawer, against the above designed acceptor, for non-payment of the contents, and for interest, damages, and expenses, deducting the partial payment above mentioned, as accords, before and in presence of E. and F. (*design them*), witnesses specially called to the premises.

*Veritas.*

X., N.-P.

*Protest at the instance of the Payee, against the Granter of a Promissory-Note, payable by instalments, and without any place of payment being mentioned in it.*

L.150.

EDINBURGH, 24th July 1843.

By three equal instalments, at three, six, and nine months after date, I promise to pay to A., writer to the Signet, the sum of one hundred and fifty pounds sterling, for value. (Signed) B.

Written on the back thus,—

27th October 1843, Fifty pounds, being the first instalment of the within note paid.

At Edinburgh, the twenty-seventh day of January eighteen hundred and forty-four years,—

The principal promissory-note above copied was, in the personal presence of (or “ at the dwelling-house of,” or “ at the counting-house of,” *as the case may be*) the said B. (*design him*), duly protested by me, notary-public subscribing, at the instance of A., therein designed, to whom the same is pay-



able, against the said B., the granter, for non-payment of the second instalment thereof, and for interest, damages, and expenses, as accords, before and in presence of E. and F. (*design them*), witnesses specially called to the premises.

*Veritas.*

X., N.-P.

*Protest for Non-acceptance and Non-payment at the instance of an Indorsee and Holder of a Bill which has not been separately presented, solely for acceptance.*

L.200.

GLASGOW, 24th July 1843.

Two months after date, pay to me or order, at your shop in Trongate, Glasgow, the sum of two hundred pounds sterling, for value.

(Signed) A.

To B., Grocer in Glasgow.

Indorsed thus,—

“ Pay the contents to C., or order. A.”

At Glasgow, the twenty-seventh day of September eighteen hundred and forty-three years,—

The principal bill above copied was, by me, notary-public subscribing, presented to the above designed B., on whom it was drawn, and acceptance and payment having been refused, it was duly protested by me, at the instance of C. (*design him*), the indorsee and holder, against the said B., for non-acceptance and non-payment of the contents, and against the drawer and indorser for recourse, and against all concerned, for interest, damages, and expenses, as accords, before and in presence of E. and F. (*design them*), witnesses specially called to the premises.

*Veritas.*

X., N.-P.

*Protest of an accepted Bill for Non-payment, at the instance of an Indorsee, against the Acceptor, Drawer, and Indorsers.*

L.500.

LONDON, 24th July 1843.

Three months after date, pay to me or order, at your warehouse, Princes Street, Edinburgh, the sum of five hundred pounds sterling, for value.

(Signed) A.  
B.

To B., Merchant, Edinburgh.

Indorsed "A. Pay the contents to D. (Signed) C."

At Edinburgh, the twenty-seventh day of October  
eighteen hundred and forty-three years,—

The principal bill above copied was, where payable, duly protested by me, notary-public subscribing, at the instance of D. (*design him*), the indorsee and holder, not only against the above designed B., the acceptor, for non-payment of the contents, but also against the drawer and indorsers, jointly and severally, for recourse, and against all concerned, for exchange, re-exchange, interest, damages and expenses, as accords, before and in presence of E. and F. (*design them*), witnesses specially called to the premises.

*Veritas.*

X., N.-P.

*Note.*—In the case of Inland Bills, the protest is not taken for "Exchange re-Exchange."

*Receipt by the Holder to an Obligant paying the Bill  
after protest.*

Edinburgh, 30th October 1843.—Received the amount of the within protested bill, with interest and charges, from the indorser C.

(Signed) D.

## CHAPTER XI.

## PAYMENT SUPRA PROTEST.

When payment of a bill or of a promissory-note has been refused, the drawee, or any other person, though not a party to it, may pay it for honour, either of the drawer or any of the indorsers. A person paying a bill or note, for honour of a party to it, has the same claim on it that the holder could have against the party for whose honour such payment was made, and against the parties liable to him. Notice of payment *supra* protest must be given in the same manner as already explained (Chap. VI.) to be necessary with respect to acceptance *supra* protest.

*Act of honour in Paying a Bill supra protest, to be written on the Protest.*

Thereafter the same day, in presence of me, the said notary-public, appeared F., merchant in Edinburgh, who offered to pay the contents of the said bill to the said E., the holder thereof, for honour, and on account, of the said A., underwriter in London, one of the indorsers of the same; and, having paid the same accordingly, he protested that the said acceptor and drawer of the said bill, and the said A., should remain jointly and severally bound to him, in like manner as they had been to the said holder, in presence of the witnesses foresaid.

(Signed) G., N.-P.

## CHAPTER XII.

## NOTICE OF DISHONOUR BY NON-PAYMENT.

*Time of notice.*—The time within which notice of the dishonour of a bill or promissory-note must be given, in order to preserve recourse against the drawer and indorsers, is regulated by 12th Geo. III. c. 72, made perpetual by 23d Geo. III. c. 18 ; and a distinction is made between foreign and inland bills.

*Foreign Bills.*—Notice of their dishonour must be given “within such time as is required by the usage and custom of merchants,” viz., to such of the parties as reside in the same place, before the expiration of the day following that on which the dishonour becomes known to the person giving the notice, and to those who reside elsewhere, by the post of the day following that on which the person giving the notice is aware of the dishonour.

As to the time of the day for giving notice, the doctrine is, that notice to a banker, or any person in business, will be valid only when given in the usual hours of business ; but that to another person, it may be given at any reasonable time of day or night, excluding the proper hours of rest.

If the proper day of notice be a Sunday, or a day of public rest or sanctity, according to the religion of the person bound to give such notice, it will be sufficient

### 36 NOTICE OF DISHONOUR BY NON-PAYMENT.

notice on the following day. Notice of the dishonour of bills falling due on Saturday may be given on Tuesday, if Monday is a holiday.

*Inland Bills and Promissory-Notes.*—Notice of their dishonour must be given “within fourteen days after the protest is taken,” in order to preserve the holder’s recourse, but the Act does not regulate the notice required from one indorser to a prior indorser, or to a drawer; and an indorser, therefore, may preserve his recourse against the drawer, or any prior indorser, by giving notice to him within a reasonable time after the indorser so giving notice receives notice himself; and this may postpone the period at which a party must accept of notice beyond the fourteen days.

*By whom notice is to be given.*—The notice of dishonour is to be given by the holder of the bill or note, or by one who is empowered to act as his agent in that matter, or by an indorser who has received notice himself, or by the acceptor or granter after payment has been demanded.

*To whom notice is to be given.*—Notice to the acceptor of a bill or granter of a promissory-note is unnecessary; but notice must be given to every other party against whom recourse is meant to be claimed. The holder may claim such recourse either against the drawer and all the indorsers, or select such of them as he thinks fit, and refrain from giving notice to the others, who will be thus liberated from their responsi-

bility, unless they get due notice from another competent person. In like manner, an indorser may select any of the prior obligants as the party against whom alone he means to claim recourse, and give notice to that party only. It is, therefore, prudent for every indorser, who receives notice of the dishonour of a bill or promissory-note, immediately to give notice himself to such prior obligants as he wishes to keep bound in recourse to him.

The holder of a bill or promissory-note, or a party retiring it, may avail himself of notice given by any person who is a party to it. But it is said that the holder of an inland bill or promissory-note cannot avail himself of the notice given after the fourteen days.

Notice to one of several partners, or joint-drawers or joint-indorsers, is considered as notice to all; and, where one of them is likewise acceptor, his acceptance implying knowledge of the bill, will stand as notice to all of them. Notice to the clerk of the drawer or indorser, given at his place of business, will be as effectual as to himself; but not when it is given in a place not appropriated to the master's business.

The bankruptcy or insolvency of a drawer or indorser is no excuse for not giving notice to him or the interim-factor or trustee on his estate. If a drawer or indorser be dead, notice should be given to his executor.

*Verbal notice ; Place.*—Verbal notice is sufficient; but, to avoid the risk of error, and to preserve better

### 38 NOTICE OF DISHONOUR BY NON-PAYMENT.

proof, it is always preferable to give notice in writing. It is not necessary that verbal notice should be received personally by the party concerned: it is sufficient, if he is a merchant or banker, that verbal notice be left at his counting-house or place of business; or, if he is not in trade, that it be left at his dwelling-house. It has been decided in England, that if the holder sends to a merchant's place of business, within ordinary business hours, to give notice to him verbally, and no person can be found there, it is not necessary to leave a written notice, as every merchant should have some person at his place of business capable of receiving notice.

*Written notice.*—The notice should contain a precise description of the bill or note, and announcement of it being dishonoured and protested, and, either expressly, or by obvious implication, apprise the party to whom it is sent that he is held liable in recourse.

The following may serve as examples.

*Notice by the Holder of a Bill to an Indorser of its Dishonour by Non-payment.*

EDINBURGH, 28th July 1843.

SIR,—I have to intimate to you, that Mr A. B.'s acceptance to C. D. & Co., dated 24th May last, for L.50, at two months, indorsed by you, lies in my hands, under protest at my instance; and I have to request that payment of the amount, with interest and charges, as after noted, may be im-

mediately made to me.—I am, Sir, your most obedient servant,  
E. F.

Bill, . . . . . L.50 0 0  
Protest and Stamp, . . .  
Postages, . . . . .  
Interest from 27th July till paid, \_\_\_\_\_

L.

To Mr G. H., Merchant, Leith.

*Notice by an Indorser to the Drawer of a Bill, intimating its Dishonour by Non-payment.*

EDINBURGH, 29th July 1843.

SIR,—I have to inform you that I have received intimation from C. D., the holder of Mr A. B.'s acceptance to you for L.50, dated 24th May last, payable two months after date, indorsed by you to me, having been dishonoured by the acceptor, and lying under protest; and I have to request that the same may be immediately retired by you.—I am, Sir, your most obedient servant,  
E. F.

To Mr G. H., Commission-Agent, Aberdeen. \*

The letter of notice should be addressed with sufficient precision to reach its destination; and when the party's address is not known to the person giving the notice, he must make due inquiry to ascertain it, and give notice without delay. It is preferable to transmit the notice through the post-office rather than by any other mode of conveyance, or by a private hand. The notice should be booked or entered in the letter-book of the person sending it, if he is in the habit of keeping a letter-book; or, at all events, a copy of the notice should be retained, and evidence preserved that the notice was put into the post-office in due time.



Proof of notice is regulated by the ordinary rules of evidence according to the law of Scotland, except in one respect, namely, that the objection of interest will not exclude the proof by the marking or testimony of the cashier, or other proper officer of a bank, although he should happen to be a partner of the establishment. —*Bell's Com.*, i., p. 417.

---

### CHAPTER XIII.

#### REGISTRATION OF THE PROTEST, AND SUMMARY EXECUTION FOLLOWING THEREON.

The law of Scotland has long afforded peculiar facilities for recovering payment of bills and promissory-notes.

The Acts 1681, c. 20; 1696, c. 36; and 12th Geo. III., c. 72 (see Appendix), successively established the creditor's right to summary diligence by letters of horning on protests, whether for non-payment or non-acceptance, first, of foreign bills, secondly, of inland bills, and thirdly, of promissory-notes, provided the protest for non-acceptance was registered in the Books of Council and Session, or other competent judicature, within six months after the date of the bill, and the protest for non-payment was so registered within six months after the bill or note falling due. The law has been much simplified and amended by a recent statute, 1st and 2d Victoria, c. 114, intituled, "An Act to

amend the Law of Scotland, in matters relating to Personal Diligence, Arrestments, and Poidings," passed under the auspices of the Lord Advocate Murray, whereby it is provided that to the Extract of any Protest of a bill or promissory-note recorded in the Books of Council and Session, or in the Sheriff-Court Books, there shall be added a warrant to arrest the debtor's funds, and to charge the obligants to pay the debt within the days of charge, under the pain of poiding and imprisonment. On expiration of the days of charge, which are six days if the debtor is within Scotland, and sixty days if he is furth thereof, the debtor may be imprisoned, or his moveables poided and sold, agreeably to the forms prescribed by the act, which will be found in the Appendix.

The following may serve as an example of a warrant to charge and arrest in terms of the statute :—

*Warrant annexed to an Extract of a Protest of a Bill registered in the Books of Council and Session, at the instance of the Holder, against the Acceptor, Drawer, and Indorser.*

And the said Lords grant warrant to messengers-at-arms, in Her Majesty's name and authority, to charge the said A. (the acceptor) and B. (the drawer and indorser) personally, or at their respective dwelling-places, if within Scotland, and if furth thereof, by delivering copies of charge at the office of the Keeper of the Record of Edictal Citations at Edinburgh, conjunctly and severally, to make payment of the foresaid principal sum of (*principal sum in bill*), and the legal interest thereof since due, and till paid, all in terms and to the effect contained in the decree and extract before written, and here referred to,

and held as repeated *brevitatis causa* ; and that to the said C. (*the holder at whose instance the protest has been taken*) within six days, if within Scotland, and if furth thereof, within sixty days next after they are respectively charged by you to that effect, under the pain of poinding and imprisonment, and also grant warrant to arrest the said A. and B., their readiest goods and gear, debts and sums of money, in payment and satisfaction of the said sum and interest ; and if they fail to obey the said charge, then to poind their readiest goods, gear, and other effects, and if needful for effecting the said poinding, grant warrant to open all shut and lockfast places, in form as effeirs.

The benefit of the statute authorising summary diligence on bills appears to be acquired by the registration of the protest for non-payment, without the registration of a previous protest for non-acceptance.

A trading company may sue or use diligence, and are liable to action or diligence under the firm by which they subscribe bonds or bills, and contract other obligations without a specification of their individual partners, but it has been decided that an unchartered company assuming a general descriptive appellation merely, such as the Shotts Iron Company, the Forth Marine Insurance Company, or the like, cannot sue under it. —*Thomson*, p. 559.

Warrant and charge to arrest may be issued not only in name of the persons at whose instance the protest has been taken, but of any obligant on the bill producing an acknowledgment of his having paid the amount due to the protesting indorsee, or of a person producing a receipt for the value by act of honour, such missive letter or receipt being always registered along

with the protest. It is a question, however, whether the drawer of a bill in favour of a third party can acquire right by a receipt or missive letter, to the protest thereon at the instance of the payee or indorsee, to the effect of following out summary diligence against the acceptor.

A protest is assignable to any person to the effect of authorising diligence in the assignee's name. Marriage being a legal assignation, appears to give the husband right to a protest previously recorded, or to diligence raised in the wife's name. A confirmation in favour of an executor vests him with the right to a registered protest or diligence at the instance of the defunct. A messenger is not warranted in executing, in name of an assignee or executor, a warrant of charge or other diligence raised in name of the cedent or author, messengers having no authority to judge of the validity of an assignation or confirmation. The assignee or executor must apply, in the manner prescribed by the statute, for a warrant or diligence at his own instance.

A person may follow out proceedings on a registered protest, although residing furth of Scotland, without a mandatary; *Stiven and Greig v. Bird*, 27th June 1822.

---

## CHAPTER XIV.

### ACTION FOR RECOVERY OF BILLS AND PROMISSORY-NOTES.

No protest for non-payment being necessary to preserve the liability of the acceptor of a bill, or of the

granter of a promissory-note, the party in right thereof may raise action against them before any competent court, founding merely on the bill or note. Action may also be raised at the instance of a creditor in a bill or note against the other obligants to him, besides the acceptor or granter, provided the same has been duly protested against them for recourse, and notice given, notwithstanding the protest has not been registered.

---

## CHAPTER XV.

### INHIBITION, ARRESTMENT, AND ADJUDICATION ON BILLS AND PROMISSORY-NOTES.

It has been seen (Chap. XIII.) that extracts of registered protests contain a warrant to arrest.

A bill or promissory-note accompanied, when necessary, by a protest, or a registered protest itself, are sufficient grounds of debt for applying for letters of inhibition and arrestment at the instance of the creditor therein. A bill or note being a liquid ground of debt, may likewise be made the ground of an action of adjudication for attaching the debtor's real estate.

---

## CHAPTER XVI.

### PRESCRIPTION OF BILLS AND PROMISSORY-NOTES.

By 12th Geo. III., c. 72, sec. 37, it is enacted, that  
“No bill of exchange, or inland bill, or promissory-

note, executed after 15th May 1772, shall be of force, or effectual to produce any diligence or action in Scotland, unless such diligence shall be raised and executed, or action commenced thereon, within the space of six years from the terms at which the sums in the said bills or notes become exigible ;” and by sec. 40, that “ the years of the minority of the creditors in such notes or bills shall not be computed in the said six years.”

The diligence, to be effectual as an interruption, must be complete. The registration of a protest, without executing the warrant of charge against the debtor, will not be sufficient, neither will raising letters of horning without giving a charge on them. Any diligence, whether by execution of a charge in terms of the Act 1st and 2d Victoria, c. 114, or by executed horning, or by arrestment, poinding, or inhibition, appears sufficient to interrupt prescription.

The action necessary to interrupt prescription must be raised by the creditor. A suspension by the debtor, of a horning raised but not executed by the creditor, will create no interruption. When the process has been called in court, the claim will thereafter be liable to no prescription but the long prescription of forty years.

A charge given to, or action raised against, one obligant, interrupts prescription as to all the obligants, as well as their representatives. It has been held that prescription on a bill is interrupted by production of the bill and registered protest, in a process of ranking and sale of the debtor's estate. A claim made in a multiplepoinding brought for distribution of the debtor's funds, or generally in any other process of competition,

would seem to be equally effectual. The lodging a claim for the debt in a sequestration, awarded under the 54th Geo. III., c. 137, or under 2d and 3d Victoria, c. 41, interrupts prescription.

Prescription may be elided by an acknowledgment of the debt after the years of prescription, by payments on account of the principal or interest after that time, also by a writing acknowledging the debt after the six years, or on the last day of the six years; *Lindsay*, May 19, 1797, *Dict.* 11137; and the creditor may refer to the oath of the debtor, whether the amount alleged to be due is resting owing.

A bill payable on demand prescribes in six years from its date, *Stevenson*, June 16, 1807, *F. C.*; but a bill payable at a postponed date, or fixed term after date, prescribes in six years after the last day of grace, *Douglas*, November 19, 1793, *Dict.* 11133 and 4602.

In the case of a bill of exchange drawn payable at sight, and at a particular place, the acceptance bearing no date,—Held that the bill fell due and became exigible as at the date thereof, without a special presentment for payment, the sexennial prescription then beginning to run; and that not being protested within six months thereafter, it was incapable of founding summary diligence, *Moffat v. Marshall*, 31st January 1838.

## CHAPTER XVII.

## GENERAL REMARKS.

It would extend this title beyond its proper limits, were any attempt made to give even an outline of all the rights and obligations of parties to bills and promissory-notes. The reader is referred to the valuable treatise of Mr Thomson, as containing the most recent and elaborate commentary on the subject. A few points, however, that require to be constantly attended to in practice, may be briefly stated here.

1. All vitiations or alterations of any kind should be studiously avoided in framing bills or promissory-notes.

2. Where there are several acceptors or granters, they are all bound, conjunctly and severally, to the drawer or payee ; and the indorsee or holder of a bill or promissory-note has a claim against all the parties to it, conjunctly and severally, until he receives full payment. Hence it follows, that, in case of the bankruptcy of the drawer and acceptor of a bill, the holder is entitled to rank upon both their estates for the full amount of the bill ; and if each should pay a dividend or composition of ten shillings per pound, the holder will escape loss.

3. In a question between the acceptor and drawer of a bill, or between the granter and payee of a promissory-note, it is competent for the acceptor or granter



to plead non-liability, either in respect of his having received no value, or of the consideration being illegal. The plea of no value can be proved only by the writ or oath of the drawer or payee. Illegal consideration attaches to bills or notes granted as an incentive to crime, for a wager, for the sale of offices connected with the administration of justice, &c., for contracts made with an alien enemy during the war, for a smuggling transaction, in defraud of creditors and others, for a gaming debt, for usury, and for various other prohibited causes, which will be found enumerated in Mr Thomson's work. The plea of illegal consideration may be established by any sort of legal proof.

4. An onerous indorsee or holder of a bill or note is no way affected by the circumstance of the acceptor or granter not having received value, or by any claims or questions between obligants, or from the consideration of granting being an illegal one, unless it was known to him, or unless the bill or note is declared null by statute, as is the case in regard to gaming debts. Every indorsation is presumed to be for value, and the indorsee to have acquired the bill *bona fide*, unless the contrary is proved by his writ or oath; but if he acquires right to a bill or note after it has been dishonoured, he may be exposed to the same objections that would attach to the drawer or indorsers.—*Thomson, p. 305, et seq.*

## APPENDIX.



No. I.

1681, c. 20.

### *Act concerning Bills of Exchange.*

Our Sovereigne Lord, Considering how necessary it is for the flourishing of trade, that bills or letters of exchange be duely payed, and have ready execution, conform to the custom of other parts, doeth therefore, with advice and consent of his Estates of Parliament, statute and ordain, that in case of any forraign bill of exchange, from or to this realm, duely protested for not-acceptance or for not-payment, the said protest having the bill of exchange prefixed, shall be registrable within six moneths after the date of the said bill, in case of non-acceptance, or after the falling due thereof, in case of non-payment, in the Books of Council and Session, or other competent judicatures, at the instance of the person to whom the same is made payable, or his order, either against the drawer or indorser, in case of ane protest for non-acceptance, or against the acceptor, in case of a protest for non-payment, to the effect it may have the authority of the Judges thereof interponed thereto, that letters of horning upon a simple charge of six dayes and others executorials necessary may pass thereupon, for the whole sums contained in the bill, as well exchange as principal, in form as effeirs, sicklike and in the same manner as upon registrat bonds, or decreets of registration, proceeding upon consent of parties, providing alwayes,

that if the saids protests be not duly registrat within six moneths, in manner above provided, then and in that case the saids bills and protests are not to have summar execution, but only to be pursued by way of ordinary action as accords : And farther, it is hereby statute and enacted, That the sums contained in all bills of exchange bear annual rent, in case of not-acceptance, from the date thereof ; and in case of acceptance, and not-payment, from the day of their falling due, ay and while the payment thereof : And farther, His Majesty, with advice foresaid, hereby declares, that notwithstanding of the foresaid summar execution provided to follow upon bills of exchange for the sums therein contained in manner above specified, yet it shall be leasom to the party charger to pursue for the exchange, if not contained in the saids bills, with re-exchange, damage, interest, and all expenses before the Ordinary Judge ; or in case of suspension, to seek the same to the charge at the discussing of the said suspension, to the effect that the same may be liquidat, and decreet given therefor, either against the party principal, or against him and his cautioners, as accords.

## No. II.

1696, c. 38.

*Act anent Inland Bills and Precepts.*

Our Sovereign Lord, with advice and consent of the Estates of Parliament, statutes, enacts, and declares, that the same execution shall be competent, and proceed upon inland bills or precepts as is provided to pass upon forraigne bills of exchange, by the twentieth Act of the third Parliament King Charles Second, holden in anno 1<sup>m</sup> vj<sup>o</sup> and eighty-one, which act is hereby extended to inland bills and precepts, in all points.

## No. III.

12th Geo. III., c. 72.

*An Act for rendering the Payment of the Creditors of Insolvent Debtors more equal and expeditious, and for regulating the Diligence of the Law, by Arrestment and Poinding, and for extending the Privilege of Bills to Promissory-Notes, and for limiting Actions upon Bills and Promissory-Notes, in that part of Great Britain called Scotland.*

“XXXVI. And whereas it would be advantageous to trade in that part of Great Britain called Scotland, that promissory-notes were allowed the like summary execution and other privileges, with bills;” be it therefore enacted, by the authority aforesaid, That from and after the fifteenth day of May one thousand seven hundred and seventy-two, the same diligence and execution shall be competent, and shall proceed upon promissory-notes, whether holograph or not, as is provided to pass upon bills of exchange and inland bills by the law of Scotland, and that promissory-notes shall bear interest as bills, and shall pass by indorsation; and that indorsees of promissory-notes shall have the same privileges as indorsees of bills in all points.

“XXXVII. And whereas the not limiting bills and promissory-notes to a moderate endurance in that part of Great Britain called Scotland, has been found by experience to be attended with great inconveniencies; for remedy whereof;” be it enacted, by the authority aforesaid, That no bill of exchange, or inland bill, or promissory-note, executed after the fifteenth day of May one thousand seven hundred and seventy-two, shall be of force or effectual to produce any diligence or action in that part of Great Britain called Scotland, unless

such diligence shall be raised and executed, or action commenced thereon, within the space of six years from and after the terms at which the sums in the said bills or notes became exigible.

XXXVIII. And be it further enacted, That no bill of exchange, or inland bill, or promissory-note, which has been or shall be granted before the said fifteenth day of May one thousand seven hundred and seventy-two, shall be of force or effectual to produce any diligence or action, unless such diligence has been or shall be raised, or action has or shall be commenced thereon, before the expiration of six years from and after the said fifteenth day of May one thousand seven hundred and seventy-two.

XXXIX. Provided always, That no notes commonly called bank-notes or post-bills, issued or to be issued by any bank or banking company, and which contain an obligation of payment to the bearer, and are circulated as money, shall be comprehended under the aforesaid limitation or prescription ; and that it shall and may be lawful and competent at any time after the expiration of the said six years, in either of the cases before mentioned, to prove the debts contained in the said bills and promissory-notes, and that the same are resting and owing, by the oaths or writs of the debtor.

XL. And it is hereby enacted and declared, That the years of the minority of the creditors in such notes or bills, shall not be computed in the said six years.

XLI. And it is further enacted and declared, That all inland bills and promissory-notes shall be protested in like manner as foreign bills before the expiration of the three days of grace, otherwise there shall be no recourse against the drawers or indorsers of such inland bills, or against the indorsers of such promissory-notes ; and it shall be sufficient to preserve the said recourse, if notice is given of the dishonour, within fourteen days after the protest is taken, without prejudice to the notification of the dishonour of foreign bills, to be made

within such time as is required by the usage and custom of merchants.

XLII. And be it further enacted, by the authority aforesaid, That from and after the said fifteenth day of May one thousand seven hundred and seventy-two, summary execution by horning or other diligence shall pass upon bills, whether foreign or inland, and whether accepted or protested for non-acceptance, and upon all promissory-notes duly negotiated, not only against the accepters of such bills or granters of such notes, but also against the drawers of such bills, and the whole indorsers of the said bills and notes, jointly and severally, excepting where the indorsation is qualified to be without recourse, saving and reserving to the drawers or indorsers their respective claims of recourse against each other, and all defences against the same according to law.

XLIII. And be it also enacted, by the authority aforesaid, That from and after the said fifteenth day of May one thousand seven hundred and seventy-two, summary execution, by horning or other diligence, shall be competent to the indorsee of a bill, although the protest is not in the name of the indorsee craving the diligence, and although the bill is not reconveyed to him by indorsation, if he produces a receipt for the value by act of honour, or a missive letter from the protesting indorsee, mentioning the dishonour agreeable to the practice of merchants in returned bills.

XLIV. And be it further enacted, by the authority aforesaid, That the present act shall continue and be in force for seven years, from the said fifteenth day of May one thousand seven hundred and seventy-two, and to the end of the then next Session of Parliament, and no longer.

---

## No. IV.

1 and 2 Vict., c. 114.—*An Act to amend the Law of Scotland in Matters relating to Personal Diligence, Arrestments, and Poidings.*

16th August 1838.

Extracts of Court of Session, Teind-Court, and Court of Justiciary decrees, to contain warrant to arrest, charge, and poid.

Whereas it is expedient to improve the form and to diminish the expense of the diligence of the law in Scotland against the persons of debtors, and to amend the law as to the diligence of arrestment and poiding: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the thirty-first day of December one thousand eight hundred and thirty-eight, where an extract shall be issued of a decree or act pronounced or to be pronounced by the Court of Session, or by the Court of Commission for Teinds, or by the Court of Justiciary, or of a decree proceeding upon any deed, decree-arbitral, bond, protest of a bill, promissory-note, or banker's note, or upon any other obligation or document on which execution may competently proceed, recorded in the Books of Council and Session, or of the Court of Justiciary, the extractor shall, in terms of the schedule (Number 1) hereunto annexed (or as near to the form thereof as circumstances will permit), insert a warrant to charge the debtor or obligant to pay the debt or perform the obligation within the days of charge, under the pain of poiding and imprisonment, and to arrest and poid, and for that purpose to open shut and lock-fast places; which extract shall be subscribed and prepared in other respects as extracts are at present subscribed and prepared, and for which extract no higher fees shall be exigible than those which are payable as by law established.

Competent to arrest.

II. And be it enacted, That it shall be lawful, by virtue of such extract, to arrest, in like manner as if letters of

arrestment on liquid grounds of debt, or letters of horning containing warrant to arrest, had been issued under the Signet.

III. And be it enacted, That it shall be lawful, by virtue of such extract, to charge the debtor or obligant therein mentioned to pay the sums of money, or to perform the obligation therein specified, within the days of charge, from and after the date of charge, under the pain of poinding and imprisonment; and the officer executing the same shall return an execution in terms of the schedule (Number 2) hereunto annexed, or as near to the form thereof as circumstances will permit.

Competent  
to charge.

Officer's  
execution.

IV. And be it enacted, That on the expiration of the days of charge, it shall be lawful, by virtue of such extract, to poind the moveable effects of the debtor, in payment of the sums of money therein mentioned, as if letters of poinding or letters of horning, containing warrant to poind, had been issued, and for that purpose to open shut and lockfast places.

Competent  
to poind.

V. And be it enacted, That it shall be competent, at any time within year and day after a charge has expired, to present such extract and execution of charge to the keeper of the General Register of Hornings at Edinburgh, and the keeper shall thereupon record the execution in that register, and state therein the name and designation of the person by whom the extract and execution were presented, and also the date of presentation; which registration shall have the same effect as if the debtor or obligant had been denounced rebel in virtue of letters of horning, and the said letters, with the executions of charge and denunciation, had been recorded according to the forms now in use, and shall have the effect to accumulate the debt and interest into a capital sum, whereon interest shall thereafter become due.

Execution  
to be regis-  
tered;

and to have  
the effect of  
denuncia-  
tion, and to  
accumulate  
interest.

VI. And be it enacted, That on the execution being recorded, the keeper of the Register shall write upon the extract and upon the execution (if it be written on paper

so Extract and  
execution,  
with certifi-  
cate of regis-  
tration, to be  
presented in



the Bill-  
Chamber for  
warrant to  
imprison.

apart) a certificate of the registration thereof, in terms or to the effect of the schedule (Number 3) hereunto annexed, which he shall date and subscribe; and if warrant to imprison be required, a writer to the Signet shall endorse and subscribe on the extract a minute to the effect of the schedule (Number 4) hereunto annexed (or as near to that form as circumstances will permit); and the extract, with the execution and certificate of registration and endorsed minute, shall be presented in the Bill-Chamber of the Court of Session; and the clerk thereof shall, if there be no lawful cause to the contrary, write on the extract this deliverance, "*Fiat ut petitur*," and shall date and subscribe the same; and it shall be lawful, by virtue of the said extract and deliverance, to search for, take, apprehend, and imprison, the debtor or obligant, and, if necessary for that purpose, to open shut and lockfast places; and magistrates and keepers of prisons are hereby authorized and required to receive into and detain in prison the person of the debtor or obligant till liberated in due course of law, in like manner as if letters of caption had been issued under the Signet.

Execution at  
the instance  
of a person  
acquiring  
right to ex-  
tract.

VII. And be it enacted, That where any person shall acquire right to an extract of a decree or act issued as aforesaid, it shall be competent to him to present in the Bill-Chamber the extract, with the execution of charge (if a charge shall have been given), and certificate of registration (if the same shall have been registered), and a minute endorsed thereon, in the form of the schedule (Number 5) hereunto annexed (or as near thereto as circumstances will permit), subscribed by a writer to the Signet, with the assignation, confirmation, or other legal evidence of such acquired right, praying for authority (as the case may be) to arrest, charge, poind the effects of, or (as the case may be) to imprison the said debtor or obligant, and open shut and lockfast places; and the clerk shall, if there be no lawful cause to the contrary, write on the extract this deliverance,

"*Fiat ut petitur*," and he shall date and subscribe the same, and endorse the same date on the documents produced, and subscribe with his initials the date so endorsed; and the extract, with such deliverance, shall be a warrant to arrest, charge, pound, and open shut and lockfast places, or (as the case may be) to search for, take, apprehend, and imprison as aforesaid, at the instance of such person.

VIII. And be it enacted, That nothing herein contained shall prevent any person from obtaining extracts, and also letters of horning, pouncing, and arrestment, or letters of arrestment and letters of caption, according to the former law and practice, if he shall see fit to proceed in that way, in place of in the manner hereby provided; but it is hereby declared, that in such case no part of the expenses thereof, except the expenses of the extract, shall be exigible from the debtor or obligant, or his estate, unless it be shewn that it is incompetent to proceed in the way herein provided; and where an extract has been issued before the commencement of this Act, it shall be competent for the person in whose favour such extract has been issued, or the person having right thereto, to obtain an extract in terms of this Act, or a warrant subjoined to the former extract in terms of the said schedule (Number 1), and to prosecute diligence thereon agreeably to the provisions hereof.

Letters of horning may be issued as formerly, but no expenses exigible.

Extracts in terms of this Act may be obtained, where extracts issued prior to its commencement.

IX. And be it enacted, That from and after the said thirty-first day of *December*, where an extract shall be issued of any decree or act pronounced, or to be pronounced, by any Sheriff, or of a decree proceeding upon any deed, decree-arbitral, bond, protest of a bill, promissory-note, or banker's note, or upon any other obligation or document on which execution may competently proceed, recorded in the Sheriff-Court Books, the extractor shall, in terms of the schedule (Number 6) hereto annexed (or as near thereto as circumstances will permit), insert therein a warrant to charge the debtor or obligant to pay the debt or perform the obligation within the

Extracts of Sheriff's decrees, &c., to contain warrant to arrest, charge, pound, and open shut and lockfast places.

days of charge, under the pain of poinding and imprisonment, and to arrest and poind according to the present practice, and, if need be for the purpose of poinding, to open shut and lockfast places; which extract shall be subscribed and prepared in other respects as extracts are at present subscribed and prepared, and for which extracts no higher fees shall be exigible than those which are payable as by law established; and where an extract has been issued from the books of the Sheriff before the commencement of this Act, it shall be competent for the person in whose favour such extract has been issued, or the person having right thereto, to obtain an extract in terms of this Act, or a warrant subjoined to the former extract in terms of the said schedule (Number 6), and to prosecute diligence thereon agreeably to the provisions hereof.

Execution  
to be regis-  
tered, and to  
accumulate  
interest.

X. And be it enacted, That it shall be lawful, by virtue of such extract, to charge the debtor or obligant therein mentioned to pay the sums of money, or to perform the obligation therein specified within the days of charge, under pain of poinding and imprisonment, and the officer executing the same shall return an execution in terms of the said schedule (Number 2), or as near to the form thereof as circumstances will permit; and it shall be competent at any time within year and day after a charge has expired to present the extract and execution of charge to the clerk of the Sheriff-Court from which the extract has been issued, who shall thereupon record the execution in the Register of Hornings kept by him, and state therein the name and designation of the person by whom the extract and execution were presented, and the date of presentation; which registration shall have the same effect as if the debtor or obligant had been denounced rebel in virtue of letters of horning, and the said letters, with the executions of charge and denunciation, had been recorded according to the forms now in use, and shall

have the effect to accumulate the debt and interest into a capital sum, whereon interest shall thereafter become due.

XI. And be it enacted, That on the execution being so recorded, the Sheriff-Clerk shall write upon the extract and upon the execution (if it be written on paper apart) a certificate of the registration thereof, which he shall date and subscribe, in terms of the schedule (Number 7) hereunto annexed (or as near thereto as circumstances will permit); and if warrant to imprison be desired, the creditor, or a procurator of Court, shall endorse and subscribe on the said extract a minute in the terms of the schedule (Number 8) hereunto annexed (or as near to that form as circumstances will permit); and the said clerk shall, if there be no lawful cause to the contrary, write on the extract this deliverance, "*Fiat ut petitur*," and shall date and subscribe the same; and it shall be lawful, by virtue of the said extract and deliverance, to search for, take, apprehend, imprison, and, if necessary for that purpose, to open shut and lockfast places as aforesaid; and magistrates and keepers of prisons are hereby authorized and required to receive into and detain in prison the person of the debtor or obligant till liberated in due course of law, in like manner as if letters of caption had been issued under the Signet.

Extract and execution, with certificate of registration, to be presented in Sheriff Court for warrant to imprison.

XII. And be it enacted, That where any person has acquired right to an extract of a decree or act of the Sheriff, he may present to the Sheriff-Clerk the extract, with the execution of charge (if a charge shall have been given), and certificate of registration (if the same shall have been registered), and a minute endorsed on the extract in the form of the schedule (Number 9) hereunto annexed (or as near thereto as circumstances will permit), subscribed by him or a procurator of Court, with the assignation, confirmation, or other legal evidence of the acquired right, praying for authority (as the case may be) to arrest, charge, poind the effects of, or (as the case may be) to imprison, the said debtor or

Execution at the instance of a person acquiring right to the extract.

obligant, and open shut and lockfast places ; and the clerk shall, if there be no lawful cause to the contrary, write on the extract this deliverance, "*Fiat ut petitur*," and he shall date and subscribe the same, and endorse the same date on the documents produced, and subscribe with his initials the date so endorsed ; and the extract, with such deliverance, shall be a warrant to arrest, charge, poind, and open shut and lockfast places, or (as the case may be) to search for, take, apprehend, and imprison as aforesaid, at the instance of such person.

Warrant of concurrence to charge, arrest, and poind.

XIII. And be it enacted, That where a debtor or obligant is, or his moveables are, within the territory of any other Sheriff than the Sheriff from whose books such extract shall be lawfully issued, it shall be competent to present the extract in the Bill-Chamber of the Court of Session, or in the Court of the Sheriff within whose jurisdiction the debtor or obligant is, or his moveables are, with a subscribed minute endorsed thereon in terms of the schedule (Number 10) hereunto annexed (or as near thereto as circumstances will permit), praying for the authority and concurrence of the Lords of Council and Session, or of the said Sheriff (as the case may be), to arrest, charge, and poind the moveables of the said debtor or obligant, and to open shut and lockfast places, all in terms of the warrant in the said extract ; and if there be no lawful cause to the contrary, the clerk in the Bill Chamber, or the Sheriff-clerk (as the case may be), shall grant authority accordingly by writing this deliverance, "*Fiat ut petitur*," and dating and subscribing the same ; and it shall thereupon be lawful to arrest, charge, poind, and open shut and lockfast places, in the same manner as if the said extract had been originally issued from the Books of the Court of Session or concurring Sheriff.

Warrant by concurring Sheriff-clerk to imprison.

XIV. And be it enacted, That where the debtor or obligant shall have been charged on a warrant of concurrence, and the execution recorded in the books of the concurring Court,

the extract and execution, with the certificate of registration, and a minute in terms of the said schedule (Number 4) hereunto annexed (or as near thereto as circumstances will permit), endorsed thereon, may be presented either in the Bill-Chamber, subscribed by a writer to the Signet, or in the Court of the concurring Sheriff, subscribed by a procurator of Court, praying for authority to imprison as aforesaid; and if there be no lawful cause to the contrary, the Bill-Chamber Clerk or Sheriff-Clerk (as the case may be) shall grant authority accordingly, by writing thereon this deliverance, "*Fiat ut petitur*," dating and subscribing the same; and it shall thereupon be lawful to open shut and lockfast places, search for, take, apprehend, and imprison, in manner hereinbefore provided.

XV. And be it enacted, That where a warrant to imprison has been granted by any Sheriff in manner hereinbefore provided, and where the debtor or obligant is within the territory of another Sheriff, such warrant may be presented, along with the extract, execution of charge, and certificate of registration, either in the Bill-Chamber or in such other Sheriff-Court, and a minute in terms, or to the effect, of the said schedule (Number 10), praying for the authority and concurrence of the Lords of Council and Session, or of the said Sheriff-Court, for executing the said warrant; and if there be no lawful cause to the contrary, the clerk in the Bill-Chamber, or the Sheriff-clerk (as the case may be), shall grant authority accordingly, by writing this deliverance, "*Fiat ut petitur*," and dating and subscribing the same; and it shall thereupon be lawful to open shut and lockfast places, search for, take, apprehend, and imprison, in the same manner as if the said warrant had been originally granted by the Court of Session or the concurring Sheriff.

Concurrence  
to warrant  
of imprison-  
ment grant-  
ed in another  
Sheriff-  
Court

XVI. And be it enacted, That from and after the said thirty-first day of December, it shall be lawful to insert in summonses raised before the Lords of Council and Session

Warrant to  
arrest may  
be intro-  
duced into  
summonses  
before the  
Court of  
Session.

concluding for payment of money, a warrant (or will) to arrest the moveables, debts, and money, belonging or owing to the defender, until caution be found acted in the Books of Council and Session, that the same shall be made forthcoming as accords to law ; and it shall be lawful to writers to the Signet to subscribe, and to the keeper thereof and his deputes to affix the Signet to such summonses, without any other authority than this Act.

Arrestment may be executed before executing the summons, but the summons must be executed and called within a limited period.

XVII. And be it enacted, That by virtue of such warrant of arrestment, and also by virtue of letters of arrestment raised upon any libelled summons according to the present practice, it shall be competent, before executing the warrant of citation, to arrest the moveables, debts, and money belonging or owing to the defender until caution be found as aforesaid ; and such arrestment shall be effectual, provided the warrant of citation shall be executed against the defender within twenty days after the date of the execution of the arrestment, and the summons called in court within twenty days after the diet of comparance, or where the expiry of the said period of twenty days after the diet of comparance falls within the vacation, or previous to the first calling-day in the session next ensuing, provided the summons be called on the first calling-day next thereafter ; and if the warrant of citation shall not be executed, and the summons called in manner above directed, the arrestment shall be null, without prejudice to the validity of any subsequent arrestment duly executed in virtue of the said warrant.

Arrestments against persons furth of the kingdom to be executed at the Record Office.

XVIII. And be it enacted, That, from and after the said thirty-first day of December, it shall not be competent to execute any arrestment, as in the hands of a person furth of *Scotland*, by service at the market-cross of *Edinburgh*, and pier and shore of *Leith*, but such arrestment shall be executed by delivery of a schedule of arrestment at the Record Office of Citations in the Court of Session, which delivery shall be made, and the schedule registered and published in the same

manner as charges are directed to be registered and published by an Act passed in the sixth year of the reign of His late <sup>6th Geo. IV. c. 120.</sup> Majesty King George the Fourth, intituled, *An Act for the better regulating of the Forms of Process in the Courts of Law in Scotland.*

XIX. And be it enacted, That, from and after the said <sup>Sheriff's precepts of arrestment may be executed within jurisdiction of another Sheriff.</sup> thirty-first day of *December*, a warrant or precept of arrestment granted by any Sheriff in *Scotland*, whether contained in a libelled summons, or proceeding upon a depending action or liquid document of debt, may lawfully be executed within the territory of any other Sheriff, the same being first endorsed by the Sheriff-Clerk of such Sheriffdom, who is hereby required to make and date such indorsation.

XX. And be it enacted, That from and after the said <sup>Lord Ordinary in the Outer House may recall or restrict arrestment subject to review.</sup> thirty-first day of *December*, it shall be competent to the Lord Ordinary in the Court of Session, before whom any summons containing warrant of arrestment shall be enrolled as judge therein, or before whom any action on the dependence whereof letters of arrestment have been executed, has been or shall be enrolled as judge therein, and to the Lord Ordinary on the bills in time of vacation, on the application of the debtor or defender, by petition, duly intimated to the creditor or pursuer, to which answers may be ordered, to recall or to restrict such arrestment, on caution or without caution, and dispose of the question of expenses, as shall appear just, provided that his judgment shall be subject to the review of the Inner-House by a reclaiming note duly lodged within ten days from the date thereof.

XXI. And be it enacted, That from and after the said <sup>Sheriff may recall or restrict arrestments subject to review.</sup> thirty-first day of *December*, it shall be competent for any Sheriff from whose books a warrant of arrestment has been issued, on the petition of the debtor or defender, duly intimated to the creditor or pursuer, to recall or to restrict such arrestment, on caution or without caution, as to the Sheriff shall appear just; provided that the Sheriff shall allow answers to



be given in to the said petition, and shall proceed with the further disposal of the cause in the same manner as in summary causes, and his judgment shall be subject to review in the Court of Session.

Arrestments  
to prescribe  
in three  
years.

XXII. And be it enacted, That an Act of the Parliament of *Scotland*, passed in the year one thousand six hundred and sixty-nine, concerning prescriptions, shall be and is hereby repealed in so far as regards the period of prescription of arrestments; and all arrestments shall hereafter prescribe in three years instead of five; and arrestments which shall be used upon a future or contingent debt shall prescribe in three years from the time when the debt shall become due, and the contingency be purified; but saving and reserving from the operation hereof all arrestments already used where the ground of arrestment is not an action in dependence at the date of passing this Act.

Compearing  
Creditors to  
be conjoined,  
and poinded  
effects to be  
valued.

XXIII. And be it enacted, That from and after the said thirty-first day of *December*, where an officer of the law shall proceed to poind moveable effects, he shall, if required, before the poinding is completed, conjoin in the poinding any creditor of the debtor who shall exhibit and deliver to him a warrant to poind; and on the effects being poinded, the officer shall cause them to be valued by two valuator, and one valuation by them shall be sufficient.

Effects to be  
left with and  
schedule  
given to the  
possessor.

XXIV. And be it enacted, That the officer shall leave the poinded effects with the person in whose possession they were when poinded; and he shall deliver to the possessor a schedule specifying the poinded effects, and at whose instance they were poinded, and the value thereof.

Officer to  
report  
poinding  
within eight  
days.

XXV. And be it enacted, That the officer shall, within eight days after the day on which the poinding was executed (unless cause shall be shewn why the same could not be done within the period of eight days), report the execution thereof to the Sheriff, in which execution he shall specify the diligence under which the poinding is executed, the amount of

the debt, the names and designations of the debtor and of the creditor at whose instance the effects were poided, the effects poided, the value thereof, the names and designations of the valutors, the person in whose hands they were left, and the delivery of the schedule as aforesaid; which execution shall be subscribed by him, and by the two valutors, who shall also be witnesses to the poiding, without the necessity of other witnesses.

XXVI. And be it enacted, That on the execution being reported, the Sheriff shall, if necessary, give orders for the security of the moveables, and if they be of a perishable nature, for the immediate disposal thereof, under such precautions as to him shall seem fit; and if not so disposed of, and if no lawful cause be shewn to the contrary, he shall, if required, grant warrant to sell them by public roup, at such time, and at such place, with such public notice of the sale, as may appear to the Sheriff most expedient for all concerned, and at the sight of a judge of the roup to be named by the Sheriff; provided that the sale shall not take place sooner than eight days, nor at a longer period than twenty days after the date of the publication of the said notice of sale; and the Sheriff shall order a copy of the warrant of sale to be served on the debtor, and on the possessor of the poided effects, if he be a different person from the debtor, at least six days before the date of the sale, excepting in the case of perishable effects.

XXVII. And be it enacted, That the poided moveables shall be offered for sale as ordered at upset prices, not less than the appraised values thereof; but, if no offerer appear, the effects, or such part thereof as, according to their appraised value, may satisfy the debt, interest, and expenses due to the poiding creditor and conjoined creditor, shall be delivered by the judge of the roup to the said poiding creditor and conjoined creditor, or to his or their authorized agent, subject

Sale to be  
advertised,  
and notice to  
the debtor.

Effects to be  
sold or deli-  
vered to  
poiding  
creditors.

to the claims of other creditors, to be ranked as by law competent.

Report and  
price to be  
lodged.

XXVIII. And be it enacted, That on the moveables being sold or delivered as aforesaid, the judge of the roup shall, within eight days after the date of the sale, make a report to the Sheriff of the said sale or delivery; and if the effects shall have been sold, he shall also, within the said space of eight days, lodge with the Sheriff-clerk the roup-rolls, or certified copies thereof, and an account of the sum arising from, and of the expenses of the sale, which sum the Sheriff may, if he shall see cause, order to be lodged in the hands of the Sheriff-clerk; and the said sum, after deduction of lawful charges, shall, if no cause be shewn to the contrary, be ordered by the Sheriff to be paid to the pouncing creditor and conjoined creditor (provided the amount does not exceed the amount of the debt, interest, and expenses), but subject to the claims of other creditors, to be ranked as by law competent; and the report and relative documents, when lodged, shall be patent to all concerned on payment of a fee of one shilling only.

Creditors  
entitled to  
purchase.

XXIX. And be it enacted, That, where any effects are exposed to sale as aforesaid, it shall be lawful for the poulder, or any other creditor, to purchase the same.

Unlawful  
intromitter  
liable to im-  
prisonment,  
or double  
the ap-  
praised  
value.

XXX. And be it enacted, That, if any person shall unlawfully intromit with, or carry off, the poulded effects, he shall be liable, on summary complaint to the Sheriff of the county where the effects were poulded, or where he is domiciled, to be imprisoned until he restore the effects, or pay double the appraised value.

Act not to  
affect land-  
lord's hypo-  
thec.

XXXI. And be it enacted, That nothing herein contained shall affect the landlord's hypothec for rents, or any hypothec known in law.

Citations,  
&c.

XXXII. And be it enacted, That extracts, citations, deliverances, schedules, and executions, may be either printed

or in writing, or partly both, and that, excepting in the case of poindings, more than one witness shall not be required for One witness. service or execution thereof.

XXXIII. And be it enacted, That it shall be lawful for Compensation. any person entitled to compensation for loss to be suffered through the operation or effect of this Act, to make application to the Lord High Treasurer, or to the Commissioners of Her Majesty's Treasury of the United Kingdom of *Great Britain and Ireland* for the time being, claiming such compensation, giving at the same time notice of such application to Her Majesty's Advocate; and it shall be lawful for the said Lord High Treasurer, or Commissioners of the Treasury, to investigate such claim, and call for such evidence in relation thereto as he or they may think necessary; and upon such claim being established to his or their satisfaction, the said Lord High Treasurer, or Commissioners of Her Majesty's Treasury, or any three of them, is and are hereby authorized and empowered to award to such person such compensation as he or they shall think him entitled to, either by the payment of a gross sum or by way of annuity, as he or they shall think proper: Provided always, that a copy of every such award for compensation shall be laid before both Houses of Parliament within two calendar months after the commencement of the Session next ensuing after making the same; and no such award shall be final and conclusive until two calendar months after the same shall have been so laid before Parliament; Provided also, that if any person to whom compensation shall be so awarded by way of annuity shall be afterwards appointed to any other Public Office, such compensation shall be accounted *pro tanto* of the salary payable to such person in respect of such other office while he shall continue to hold the same.

XXXIV. And be it enacted, That the several compensa- Compensation how to be paid. tions which may be awarded under the authority of this Act shall be payable and paid out of the monies which, by the Acts of the seventh and tenth years of the reign of Her Majesty

Queen *Anne*, were made chargeable with the fees, salaries, and other charges allowed, or to be allowed, for keeping up the Courts of Session, Justiciary, or Exchequer in *Scotland*.

Diligence  
under this  
Act.

XXXV. Provided always, and be it enacted, That diligence executed under the provisions of this Act shall have the same effect as if such diligence had been executed by virtue of Letters of Horning or Letters of Caption, or if Arrestments and Poidings had been executed under the forms heretofore in use.

Act may be  
repealed,  
&c.

XXXVI. And be it enacted, That this Act may be amended or repealed by any Act to be passed during the present Session of Parliament.

---

#### SCHEDULES referred to in the foregoing Act.

##### 1.—*Warrants to be subjoined to Extracts in the Court of Session, &c.*

And the said Lords grant warrant to Messengers-at-Arms in Her Majesty's name and authority to charge the said *A.* personally, or at his dwelling-place, if within *Scotland*, and if furth thereof by delivering a copy of charge at the Record Office of the Keeper of the Records of the Court of Session. [*state what the party is decerned to do ; if to pay money, specify the sum, interest, and expenses ; or if to fulfil an obligation, specify it as in the decree or other document*], and that to the said *B.* [*specify the name of the person in whose favour the decree is pronounced*] within [*insert the appropriate days*] next after he is charged to that effect, under the pain of poiding and imprisonment, [*if the sum or any part thereof be payable at a future time, add here, " the terms of payment being always first come and bygone ;"*] and also grant warrant to arrest the said *A.*'s readiest goods, gear, debts, and sums of money, in payment and satisfaction of the said sum, interest, and expenses ; and if the said *A.* fail to obey the said charge, then to poid the said *A.*'s readiest goods,

gear, and other effects, and, if needful for effecting the said  
poining, grant warrant to open all shut and lockfast places,  
in form as effeirs. Extracted [*specify place and date.*]

[*Extractor's Signature.*]

## 2.—Execution of Charge.

Upon the \_\_\_\_\_ day of \_\_\_\_\_ I  
 Messenger-at-Arms [or *Officer of Court*], by virtue of [*state  
 nature and date of extract and decree, or document where-  
 upon it proceeds*], at the instance of *B.* [*specify name and  
 designation of creditor*] against *A.* [*specify name and desig-  
 nation of debtor or obligant*] passed and in Her Majesty's  
 name and authority lawfully charged the said *A.* to [*state  
 what the party has been charged to do ; if to pay money,  
 specify the sum, interest, and expenses ; or if to fulfil an  
 obligation, specify it as in the extract,*] and that to the said  
*B.* within \_\_\_\_\_ days next after the date of my said  
 charge, under the pain of poinding and imprisonment. This  
 I did by [*state mode of execution, whether personally or other-  
 wise,*] before and in presence of *C.*, witness to the premises.

[Officer's Signature.]

[*Witness's Signature.*]

### 3.—Certificate of Registration of Execution of Charge.

Presented by *A. B. [state name and designation]*, and  
registered in the General Register of Hornings on the  
day of *[Keeper's Signature.]*

[Keeper's Signature.]

4.—*Minute in Bill-Chamber for Warrant to Imprison.*

[Place and Date.]

The charge being expired and registered, as per execution and certificate produced, warrant is craved to search for, take, and apprehend, the person of the said *A.* [*specify name of debtor or obligant*], and being so apprehended, to imprison him within a tolbooth or other warding place, therein

to remain until he fulfil the said charge, and, if necessary for that purpose, to open shut and lockfast places ; and warrant also to Magistrates and Keepers of Prisons to receive and detain the said *A.* accordingly.

(Signed) *A. B.*, W.S.

[*The Clerk will subjoin*]

Fiat ut petitur.

[*Dated and signed by the Clerk.*]

---

5.—*Minute by Assignee, &c.*

[*Place and Date.*]

Warrant is craved [*state what is prayed for*] at the instance of [*specify name and designation of the applicant*] as [*assignee or otherwise, as the case may be*] of [*specify name and designation of the person at whose instance the extract was issued*]. Produced herewith [*assignation, or confirmation, or other legal evidence of the acquired right, as the case may be*]. Dated the       day of       [*and if for imprisonment, execution of expired charge and certificate of registration shall be produced, and warrant craved as in No. 4.*]

(Signed) *A. B.*

[*The Clerk will subjoin*]

Fiat ut petitur.

[*Dated and signed by the Clerk.*]

---

6.—*Warrant to be subjoined to Sheriff-Court Extracts.*

And I the said Sheriff grant warrant to messengers-at-arms and officers of Court to charge the said *A.* personally, or at his dwelling-place [*state what the party is decerned to do ; if to pay money, specify the sum, interest, and expenses ; or if to fulfil an obligation, state the nature of it, as in the decree or other document*], and that to the said *B.* [*name of the person in whose favour the decree is pronounced*], within [*insert the appropriate days*] next after he

is charged to that effect, under the pain of pointing and imprisonment, [if the sum or document or any part be payable at a future time, add here, "the terms of payment being first come and bygone;"] and also grant warrant in satisfaction of the said sum, interest, and expenses, to arrest the said *A.*'s readiest goods, debts, and sums of money; and if the said *A.* fail to obey the said charge, then to appraise, point, and distrain, all the said *A.*'s readiest goods, gear, and other effects; and if needful for effecting the said pointing, grant warrant to open all shut and lockfast places, in form as effeirs. Extracted, &c. [Extractor's Signature.]

7.—*Certificate of Registration of Execution of Charge in Sheriff-Court.*

Presented by *A. B.* [*name and designation*], and registered in the Particular Register of Hornings for the shire of \_\_\_\_\_  
on the \_\_\_\_\_ day of \_\_\_\_\_  
[*Keeper or Clerk's Signature.*]

8.—*Minute in Sheriff-Court for Warrant to Imprison.*

[Place and Date.]

The charge being expired and registered, as per execution and certificate produced, warrant is craved to search for, take, and apprehend, the person of the said *A.* [*name of debtor or obligant*], and being so apprehended, to imprison him within a tolbooth or other warding place, therein to remain until he fulfil the said charge, and, if necessary for that purpose, to open shut and lockfast places; and warrant also to Magistrates and Keepers of Prisons to receive and detain the said *A.* accordingly. (Signed) *A. B.*

[The Clerk will subjoin]

**Fiat ut petitur.**

[Dated and signed by the Clerk.]



9.—*Minute in Sheriff-Court by Assignee, &c.*

[Place and Date.]

Warrant is craved [state what is prayed for] at the instance of [specify name and designation of the applicant], as [assignee or otherwise, as the case may be] of [specify name and designation of the person at whose instance the extract was issued and in whose right the applicant is], produced herewith [say assignation or confirmation, or other legal evidence of the acquired right, as the case may be.] Dated the            day of            , [and if for imprisonment, execution of expired charge and certificate of resignation shall be produced, and warrant craved to imprison, as in No. 8.]

(Signed)      A. B.

[The Clerk will subjoin]

Fiat ut petitur.

[Dated and signed by the Clerk.]

10.—*Minute for Warrant of Concurrence.*

[Place and Date.]

Warrant of concurrence by the Lords of Council and Session is craved at the instance of [specify name and designation of applicant] for executing the within warrant against the within-designed [specify name of debtor or obligant.] A. B.

[If the application is to a Sheriff, leave out "Lords of Council and Session," and say Sheriff of (inserting the shire.)]

[The Clerk of the Bills or the Sheriff-Clerk, as the case may be, will subjoin]

Fiat ut petitur.

[Dated and signed by the Clerk of the Bills or Sheriff-Clerk, as the case may be.]

## INDEX.

---

**ACCEPTANCE** ; proper time for presentment for, 9, 10 ; Bill may be left for, 9 ; proper place for presentment for, 10 ; partial or conditional, 10 ; if Drawee dies before, 10, 11 ; presentment for, by representative of Creditor, 11 ; failure to present for, how excused, 11 ; Bill protested for, need not again be protested for non-payment, 14 ; protest for non-acceptance equivalent to assignment, 15 ; *supra* protest, or for honour, 15, *et seq.* ; *supra* protest, when competent, 15, 16 ; form of instrument of, *supra* protest, 16, 17 ; rules regarding, *supra* protest, 17, *et seq.* ; notice of dishonour by non-acceptance, 20.

**ACCEPTER** ; who designated, 1 ; see *Acceptance, Payment*.

**ACT OF HONOUR** ; see *Honour*.

**ACTION** ; for recovery of Bills, &c., 43, 44 ; interrupts prescription, 45.

**ADJUDICATION** ; may be led on bills, &c., 44.

**ALTERATION** ; see *Vitiation*.

**AGENT** ; see *Mandatory*.

**ARRESTMENT** ; warrant for, to be annexed to registered protests, 41 ; Letters of Arrestment may be obtained, 44.

**ASSIGNATION** ; necessary to transfer protest or diligence, 8, 43 ; protest for non-acceptance, equivalent to, 15 ; marriage operates as an, 43.

**BILLS OF EXCHANGE** ; description of, 1 ; designation of parties to, 1 ; may be transferred by indorsation, 1 ; are either *Foreign* or *Inland*, 2 ; when reckoned Foreign, 2 ; when Inland, 2 ; no precise form of words necessary for, 2 ; blank, 2 ; may be drawn, &c., *per* procuration, 2 ; stamp requisite for, 3 ; form of, 3, *et seq.* ; indorsation of, 7, *et seq.* ; presentment for acceptance of, 9 ; protest for non-acceptance of, 11 ; acceptance of, *supra* protest, 15 ; notice of dishonour of, by non-acceptance, 20 ; presentment for payment of, 21, 25 ; how time of payment of, to be reckoned in different kinds of, 22 ; noting and protest of, for non-payment, 26 ; payment of, *supra* protest, 24 ; notice of dishonour of, by non-payment, 25 ; diligence on, 40, 44 ; action for, 43 ; prescription of, 44 ; vitiations of, 47 ; parties to, jointly and severally liable for, 47 ; where no value given for, or consideration illegal, 48 ; onerosity presumed, 48.

**CALENDAR MONTHS** ; time of payment computed by, 23.

**COMPANT** ; notice of dishonour to one of several partners of, sufficient, 37 ; trading company may sue or use diligence, 42 ; liable to action or diligence under the firm, 42.

COMPUTATION OF TIME; see *Time of Payment*.

DAYS OF GRACE; number of, 22; when allowed, 22; what if holiday or Sunday occurs in, 23.

DEMAND; Bills and Notes payable on, must be presented for payment within a reasonable time, 21, 22.

DILIGENCE; see *Execution*.

DISHONOUR; notice of, by non-acceptance, 20; form of notice of, by non-acceptance, 20; notice of, by non-payment, 35; time of notice in case of Foreign Bills, 35; time of notice in case of Inland Bills, 36; by whom, and to whom notice is to be given, 36, 37; verbal notice of, 37; written notice of, 38; form of notice of, by non-payment, 38, 39; notice of, should be sent through Post-Office, 39; proof of notice of, 40.

DRAWER; who designated, 1.

DRAWEE; who designated, 1.

EXECUTION; summary, on registered protest, 40, *et seq.*

EXECUTOR; acquires right to bills and protests by confirmation, 43.

FOREIGN BILLS; what reckoned, 2; see *Bills*.

GAMING DEBT; null, 48.

GRACE, DAYS OF; see *Days of Grace*.

GRANTER; who designated, 1.

GRANTEE; who designated, 1.

HOLDER; who designated, 1.

HOLIDAY; effect of, occurring in days of grace, 22, 23; what if proper day of notice occurs on a, 35, 36.

HONOUR; acceptance for, 15; act of, 15; payment for, 34; act of, in paying, 34.

HUSBAND; may indorse Bills payable to his wife, 8; marriage is a legal assignment to, 48.

ILLEGAL CONSIDERATION; Bills for, null, 48; what if Bills for, held by third party, 48.

IMPRISONMENT; may follow on expired charge for payment, 41.

INDORSATION; Bill or Promissory-Note transferred by, 7; how performed, 7; when competent, 7; may be special or not, 7; without recourse, 8; conditional, 8; partial, incompetent, 8; date of, 8; by Executor or Husband, 8; does not transfer Protest or Diligence, 8; Presumed for value, 48; after Bill or Note falling due, 48.

INDORSEE; who designated, 1; liability of, 8; without recourse, 8.

INDORSER; who designated, 1; has recourse against whole prior parties on Bill, 8; restrictions on right of, 8; privileges of onerous, 48; onerosity presumed, 48; how contrary proved, 48.

INHIBITION; competent on Bills, &c., 44.

INLAND BILLS; what reckoned, 2; see *Bills*.

MANDATARY; Bill may be drawn, &c. by, 2; Promissory-Note may be granted,

- &c. by, 2; liability of, 3; not necessary in raising diligence on protests at instance of persons furth of Scotland, 43.
- MARRIAGE**; is a legal assignation to the husband, 43.
- MONTHS**; how computed on Bills, 23.
- NOTICE OF DISHONOUR**; form of, by non-acceptance, 20; form of, by non-payment, 38, 39; see *Dishonour*; verbal, 37.
- NOTING**; see *Protest*.
- ONEROSITY**; presumed in favour of Drawer, Payee, and Indorsers, 47, 48; how the plea of no value can be proved, 48.
- PAYEE**; who designated, 1.
- PAYMENT**; presentment for, to preserve recourse against Drawer or Indorser, 21, *et seq.*; time of presentment for, 21; hour of presentment for, 23; where and to whom presentment to be made, 24; presentment for, if Acceptor absent, bankrupt, or dead, 24; presentment for, to preserve liability of the Acceptor or Granter *only*, 25; where and when such presentment necessary, 25, 26; noting or protest for non-payment, 26, *et seq.*; *supra* Protest, 34.
- PENDING**; may follow on expired charge for payment, 41.
- POST**; Bills should be transmitted by, 22; notice of dishonour should be transmitted by, 39.
- PRESENTMENT FOR ACCEPTANCE**; see *Acceptance*; *Payment*.
- PRESCRIPTION**; Bills, &c. prescribe within six years, from the time of becoming due, unless diligence raised, &c., 45; what diligence effectual, 45; what action necessary, 45; how prescription otherwise elided, 45, 46.
- PROCURATION**; see *Mandatory*.
- PROMISSORY-NOTES**; description of, 1; designation of parties to, 1; may be transferred by indorsation, 1; no precise form of words necessary for, 2; may be granted, &c. *per* procuration, 2; stamp requisite for, 3; form of, 3, *et seq.*; indorsation of, 7, *et seq.*; presentment for payment of, 21, 25; how time of payment of to be reckoned, 22; noting and protest of, for non-payment, 26; payment of, *supra* protest, 34; notice of dishonour of, by non-payment, 35; Diligence on, 40, 44; action for, 43; prescription of, 44; vitiations of, 47; parties to, jointly and severally liable, 47; where no value given for, or consideration illegal, 48; onerosity/presumed, 48.
- PROTEST**; for non-acceptance, 11, *et seq.*; for detention of Bill, 12, 13; forms of, for non-acceptance, 12, 13; form of, for detention, 13, 14; for non-payment 26, 27; forms of, for non-payment, 28, *et seq.*; registration of, 40; effect of registration of, 41.
- RECEIPT**; for protested Bill, 33; person holding, may procure warrant to charge, &c. in his name, 42, 43.
- REGISTRATION**; when and where protests may be registered, 40, 41; rights resulting from, 41, *et seq.*
- SHORT**; duties of holders of Bills payable at, 9, *et seq.*; whether days of grace allowed on, Bills payable at, 22.

**STAMP**; Bill or Note must be written on, 3.

**SUMMARY DILIGENCE**; see *Execution*.

**SUNDAY**; effect of, occurring in days of grace, 22, 23; what if proper day of notice occurs on a, 35, 36.

**TIME OF PAYMENT**, how computed, 22, 23.

**VITIATION**; not permitted, 47.

**WARRANT TO CHARGE**; to be annexed to extracts of registered protests, 41; form of, 41.

